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1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 18-71748

4 Adv. Case No. 20-08051-ast

5 - - - - - x

6 In the Matter of:

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8 ORION HEALTHCORP, INC.,

9

10 Debtor.

11 - - - - - x

12 HOWARD M. EHRENBERG IN HIS CAPACITY AS LIQUIDATING TRUSTEE

13 OF ORION HEALTHCORP, INC.,

14 Plaintiff,

15 v.

16 SARTISON, et al.,

17 Defendant.

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Page 2

1                   United States Bankruptcy Court  
2                   290 Federal Plaza  
3                   Central Islip, New York 11722  
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5                   June 16, 2021  
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21                 B E F O R E :  
22                  HON ALAN S. TRUST  
23                  U.S. BANKRUPTCY JUDGE  
24  
25                  ECRO: UNKNOWN

Page 3

1 HEARING re 8-18-71748-ast Orion Healthcorp, Inc. [949]  
2 Motion to Sell Property of the Estate Free and Clear of  
3 Liens under 11 U.S.C 363(f) / Notice and Motion for Entry of  
4 an Order Authorizing the Sale of Apartment 12J Located at 2  
5 River Park Avenue, New York, N.Y. Free and Clear of Liens,  
6 Claims, and Encumbrances and (II) Application for Entry of  
7 an Order Authorizing and Approving Payment to the  
8 Residential Board and of Sales Commission Upon Closing.  
9 Filed by Jeffrey P Nolan on behalf of Howard M. Ehrenberg.

10

11 8-20-08051-ast Ehrenberg v. Elena Sartison et al  
12 Status Conference

13

14 [1] Complaint by Howard M. Ehrenberg in his capacity as  
15 Liquidating Trustee of Orion Healthcorp, Inc., et al against  
16 Elena Sartison, 2 River Terrace Apartment 12J, LLC, Clodagh  
17 Bowyer Greene a/k/a Clodagh Bowyer, Elliott Greene.

18 Nature(s) of Suit: (13 (Recovery of money/property - 548  
19 fraudulent transfer)).

20

21 [83] Order to Schedule Trial and Establishing Deadlines of  
22 the Liquidating Trustees Motion to Sell Property of the  
23 Estate [main case dkt 949].

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Page 4

1 [86] (Motion for Determination of Final Order Awarding  
2 Summary Judgment). Filed by Jeffrey P Nolan on behalf of  
3 Howard M. Ehrenberg (related document(s) 42).

4

5 [84] Motion To Stay Order Pending Appeal. Filed by Maryam N  
6 Hadden on behalf of 2 River Terrace Apartment 12J, LLC  
7 (related document(s) 64, 83).

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

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16 BY: MARYAM N. HADDEN

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23 New York, NY 10016

24

25 BY: LAURENCE D. PITTINSKY

Page 6

1       **ALSO PRESENT:**

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3       **WESLEY STANTON**

4       **HOWARD M. EHRENBERG**

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# **P R O C E E D I N G S**

2 CLERK: Okay, good afternoon. I'm Yvette Mills,  
3 courtroom deputy for Chief Judge Alan S. Trust presiding.  
4 These hearings are being recorded. Please speak clearly.  
5 All parties not speaking, please put your phone on mute.

6                   We'll start with Case Number 18-71748, Orion  
7 Healthcorp, Inc. We also have -- well, do you want me to  
8 just leave that at that for now, Judge?

9 THE COURT: We'll take them together.

10 CLERK: Case Number 20-08051. Ehrenberg v. Elena  
11 Sartison, et al.

12 THE COURT: This is Judge Trust. We'll take  
13 appearance, please, first for the liquidating Trustee.

14 MR. SCHARF: Good morning, Your Honor -- or good  
15 afternoon, Your Honor. It's Ilan Scharf from Pachulski  
16 Stang Ziehl & Jones on behalf of the Trustee. We also have  
17 Jeffrey Nolan from my firm as counsel to the Trustee. The  
18 Trustee is on the line, as is another witness for the sale  
19 motion, Mr. Wesley Stanton.

20 THE COURT: All right. And who do we have for 2  
21 River Terrace?

22 MS. HADDEN: Maryam Hadden, Parlatore Law Group.  
23 Good afternoon, Your Honor.

THE COURT: Any witnesses for 2 River Terrace?

25 MS. HADDEN: No, Your Honor. You'll just hear my

1       sterling arguments.

2                     THE COURT: All right. Thank you both. All  
3       right, so the Court's intention is, even though these are  
4       not all necessarily evidentiary hearings, because of the  
5       overlap, I'm going to take the sale motion of the main case  
6       and the finality motion and the stay pending appeal motion  
7       in the adversary proceeding altogether.

8                     I want to start on the evidence, so we'll take the  
9       witnesses for the Trustee first. Can we get -- did you want  
10      to go with Mr. Stanton first or Mr. Ehrenberg?

11                  MR. NOLAN: Your Honor, Jeff Nolan, appearing on  
12      behalf of the Plaintiff. I think we would start with Mr.  
13      Stanton first.

14                  THE COURT: All right. Mr. Stanton, I can see  
15      you, but please identify yourself so that you can become  
16      center screen.

17                  MR. STANTON: Sure. My name is Wesley Stanton.  
18      I'm with the Stanton Hoch team at Compass Real Estate.

19                  THE COURT: All right. All right, Mr. Nolan?

20                  MR. NOLAN: Yes, Your Honor. So, we submitted in  
21      support of the sale motion, the affidavit of Mr. Stanton  
22      with certain exhibits. I do not believe there are any  
23      objections to the exhibits to Mr. Stanton's affidavit. And  
24      so if there is, I'd be more than happy to address those  
25      issues, but I'd like to move his affidavit and the exhibits

1 into evidence.

2 THE COURT: Just for the record, give us that  
3 docket number again of his affidavit.

4 MR. NOLAN: His affidavit is attached to Docket  
5 Number 949, in the main case, 18-71748

6 THE COURT: All right. Ms. Hadden, is there any  
7 objection to Mr. Stanton's declaration or supporting  
8 documents?

9 MS. HADDEN: No objection to his declaration and  
10 no objection to the brochure for the Compass Stanton Hoch  
11 Group, which is attached. I believe there was also an  
12 exhibit attached that was printouts of various real estate  
13 advertisements. Although I apologize if I'm getting this  
14 wrong, Mr. Nolan. That may not have been attached to Mr.  
15 Stanton's affidavit. Is that one of the exhibits that  
16 you're currently offering as well?

17 MR. NOLAN: So, that's a good question. So, no,  
18 not with respect to the affidavit that's attached to the  
19 sale motion. I was going to present the advertisement, Your  
20 Honor, which are Exhibit 2 to the evidentiary hearing.  
21 That's a separate exhibit.

22 MS. HADDEN: Okay, so just so that -- I just  
23 wanted to be clear on that. I have no objection to either  
24 the declaration of Mr. Stanton or to the brochure for his  
25 group, which was attached.

Page 10

1           THE COURT: All right. So, for benefit of the  
2 record, Mr. Stanton's declaration and the exhibits of that  
3 declaration, which are all part of Docket Item 949 in the  
4 main case are admitted. We'll make those Exhibit 1 to this  
5 hearing. So that's all admitted as Exhibit 1.

6           (Plaintiff's Exhibit 1 Entered into Evidence)

7           THE COURT: Mr. Nolan, do you want to address now  
8 your Exhibit 2 and where it appears on the docket?

9           MR. NOLAN: Yes, Your Honor. So, for the ease of  
10 the witnesses, I've put together the exhibit list, which is  
11 Docket Number 90 in the adversary case, 20-08051.

12           THE COURT: Is the -- is the Exhibit 2, though, of  
13 Mr. Stanton -- has that been filed on the docket or is that  
14 a separate document?

15           MR. NOLAN: That should be attached to the exhibit  
16 list, which is Docket 90, Your Honor.

17           THE COURT: In the adversary?

18           MR. NOLAN: Correct.

19           THE COURT: All right, give me one minute. All  
20 right, so on Exhibit 90 in the adversary docket, 20-08051,  
21 which of those exhibits are you offering through Mr.  
22 Stanton?

23           MR. NOLAN: I will be offering, Your Honor,  
24 Exhibits 1 and 2.

25           THE COURT: For identification purposes and to

Page 11

1 keep the record clean, Docket Item 90 in the adversary  
2 proceeding, what is marked as Exhibit 1 on that document  
3 will actually be Exhibit 2 on this trial record. And those  
4 are -- that's the brochure. Exhibit -- what is marked as  
5 Exhibit 2, various advertisements, that would be Exhibit 3  
6 for the trial record. Ms. Hadden, is there any objection to  
7 the admission of Exhibits 2 or 3?

8 MS. HADDEN: No objection as to the admission of  
9 Exhibit 2, which is substantially the same as part of  
10 Exhibit 1. As to Exhibit 3, which is the advertisements, I  
11 do have an objection in that although they do appear to be  
12 essentially screenshots of webpages, some of those webpages  
13 have tabs which are not expanded, so they're not complete  
14 screenshots and they're also not screenshots that were taken  
15 at the time that the listing was active. They were all  
16 taken after the listing had been at least somewhat  
17 deactivated due to the property being under contract. So, I  
18 would object to those going into evidence.

19 (Plaintiff's Exhibit 2 Admitted into Evidence)

20 THE COURT: All right. I'll let Mr. Nolan -- I'll  
21 let you make any foundation of Exhibit 3 through Mr. Stanton  
22 before he would go to cross.

23 MR. NOLAN: Okay, Your Honor, thank you. And then  
24 just for one more piece of housekeeping, Exhibit 3 to Docket  
25 90, which is the contract of sale for the condominium unit,

Page 12

1 that can either come in through -- that was attached to Mr.  
2 Stanton's affidavit as a true and correct copy of the  
3 contract for sale, and I would submit that that -- I'm going  
4 to ask, you know, both witnesses, but I would submit that it  
5 can be -- you know, is a true and correct copy and should be  
6 moved into evidence.

7 THE COURT: All right, so then Exhibit -- contract  
8 of sale for the condominium unit will be marked as Exhibit 4  
9 to this trial record. Ms. Hadden, any objection to Exhibit  
10 4, the contact of sale?

11 MS. HADDEN: So long as Mr. Stanton testifies  
12 consistently with Mr. Nolan's representation that it's a  
13 true and accurate copy, which I assume he will, I have no  
14 objection.

15 THE COURT: All right. All right, so then subject  
16 to that foundation, Exhibit 4 is admitted.

17 (Plaintiff's Exhibit 4 Admitted into Evidence)

18 THE COURT: Any other exhibits offered to Mr.  
19 Stanton?

20 MR. NOLAN: No, Your Honor.

21 THE COURT: All right. Mr. Stanton?

22 MR. STANTON: Yes, Your Honor.

23 THE COURT: Are you familiar with the affidavit  
24 that bears your name which has been filed --

25 MR. STANTON: Yes.

Page 13

1           THE COURT: -- in this -- in the main bankruptcy  
2 case?

3           MR. STANTON: Yes, I am.

4           THE COURT: All right. And is the information  
5 contained within your affidavit true and correct, to the  
6 best of your knowledge?

7           MR. STANTON: To the best of my knowledge, yes.

8           THE COURT: All right. I'm actually going to have  
9 you raise your right hand do to be sworn in. I'm two  
10 questions beyond the swearing you in part. So, do you swear  
11 or affirm that the testimony you're about to give will be  
12 true and correct, to the best of your knowledge and belief?

13          MR. STANTON: Yes.

14          THE COURT: And so let me just have you repeat --  
15 the affidavit -- you can lower your... The affidavit that  
16 you've executed, the information contained in that affidavit  
17 is true ad correct, to the best of your knowledge and  
18 belief?

19          MR. STANTON: Yes, to the best of my knowledge,  
20 yes.

21          THE COURT: All right. So, then Mr. Stanton's  
22 declaration will stand as his direct testimony. Mr. Nolan,  
23 if you just want to briefly cover foundation on the  
24 advertisements?

25          MR. NOLAN: Yes, Your Honor. Your Honor, is there

Page 14

1 any objection to the expertise of Mr. Stanton? If there is,  
2 I can go ahead and lay a foundation.

3 THE COURT: I think his affidavit sets out his  
4 expertise, knowledge in the sale of units of this type.  
5 I'll let Ms. Hadden challenge that if she wishes to on  
6 cross, in terms of weight.

7 MR. NOLAN: Okay, thank you, Your Honor. Let me  
8 take a step back.

9 DIRECT EXAMINATION OF WESLEY STANTON

10 BY MR. NOLAN:

11 Q Mr. Stanton, good afternoon. Can you tell me what your  
12 occupation is?

13 A I'm a real estate agent in Manhattan and Brooklyn.

14 Q And how long have --

15 THE COURT: Mr. Nolan, you don't need to go back  
16 through everything that's already in his declaration. All  
17 of that constitutes not his direct testimony.

18 MR. NOLAN: Okay, thank you, Your Honor.

19 THE COURT: Unless it's directly pertinent to the  
20 foundation to the advertisements, it's already in the  
21 record.

22 MR. NOLAN: Okay, thank you, Your Honor. And for  
23 the ease of the record, when I -- I'm going to reference the  
24 property, and when I'm doing that, I'm referencing the  
25 condominium at 2 River Terrace, Apartment 12J.

1 BY MR. NOLAN:

2 Q Mr. Stanton, did you, as part of your duties as the  
3 sales agent to market and sell the property, did you  
4 advertise the property?

5 A Yes.

6 Q And across what mediums did you advertise the property?

7 A The property was put into the brokers database, which  
8 syndicates to all the real estate Board of New York brokers.  
9 It was on, as I understand, over 90 domestic websites and 70  
10 international websites. We used our contacts within the  
11 industry. Brokers that we knew were active in the area in  
12 the building. It was on Compass.com through what's called  
13 the Virtual Office Network. It was also listed on various  
14 other brokerage companies' websites throughout the  
15 (indiscernible) network.

16 Q Thank you. And besides the old school way of  
17 advertising across with other brokers, do you also advertise  
18 across the, you know, internet and electronic or other type  
19 of advertising for the property?

20 A Yes, many of the -- all of those websites are very  
21 client-focused like Zillow and StreetEasy and Trulia, Wall  
22 Street Journal, so on and so forth. Those are directed  
23 marketed to buyers, whereas the brokerage database is really  
24 more towards the brokers.

25 Q Thank you. And if you would look at Exhibit 3, which

1       is Exhibit 2 in the binder in front of you, which are  
2       various internet or intellectual -- you know, various types  
3       of mediums to advertise the property. Can you just briefly  
4       describe what those are to the Court?

5       A       So, these are the listings that were put up advertising  
6       the property. They -- the first one is Realtor.com, but  
7       there are several others that we -- we put online for the  
8       benefit of any buyer that would be interested in buying the  
9       property.

10                  When the property -- when it's a contract, we  
11       uploaded it into contract, but it was, I think, listed on  
12       April 3rd and it didn't go to contract until April 23rd.  
13       so, it was openly marketed during that time. And then,  
14       obviously, I was using some of my personal connections prior  
15       to that time.

16       Q       And do you have any ability to tell the Court whether  
17       or not advertising across these different entities, such as  
18       Realtor.com or Zillow, resulted in any type of interest in  
19       the property?

20       A       We got -- we got several inquiries on the property.

21       Q       In your projection -- in custom and practice as a real  
22       estate agent, is it normal to advertise across these type of  
23       mediums like Compass.com, Zillow and Realtor.com?

24       A       Yes.

25       Q       Can you please tell me whether or not, looking at

Page 17

1      Exhibit 3, which are the advertisements -- those are true  
2      and correct copies of advertisements for the property in  
3      question?

4      A      Yes.

5      Q      And how do you know that?

6      A      Because I'm the one that put them up. And I provided  
7      them to you.

8                MR. NOLAN: Your Honor, I'd like to move the  
9      Exhibit 3, which are the advertisements, into evidence.

10              THE COURT: Ms. Hadden, any objections?

11              MS. HADDEN: May I have a brief voir dire, Your  
12      Honor?

13              THE COURT: All right.

14              MS. HADDEN: Thank you.

15                VOIR DIRE OF WESLEY STANTON

16      BY MS. HADDEN:

17      Q      Good afternoon, Mr. Stanton.

18      A      Hi, how are you?

19      Q      Good. How are you? If there's anything that I ask you  
20      that you don't understand, please just let me know and I'll  
21      rephrase it, all right?

22      A      Of course. Thank you.

23      Q      Thank you. Now, you said that you recognized these  
24      advertisements which are contained in Exhibit 2 in front of  
25      you and Exhibit 3 as renumbered by the Court. You said you

1       recognized them because you had put them up. Now, as a real  
2       estate broker, do you have access to put information onto  
3       the third party sites such as Zillow or Redfin or any of the  
4       other sites? Or is it something where you send out a  
5       uniform listing and then that listing is uploaded and  
6       adapted?

7       A       It -- well, at Compass it works at both. There are  
8       certain things that are just syndicated. For example, the -  
9       - in the instance of StreetEasy or Zillow, we need to put it  
10      in directly.

11      Q       And are there other third party agencies where they  
12      take that information and then they themselves add it to  
13      their site?

14      A       I don't know for sure. I would think so, yes, as we  
15      syndicate to 90 domestic sites and over 70 international  
16      sites. I'm not sure how it gets to those sites but it gets  
17      there.

18      Q       And the sites that are contained in that exhibit in  
19      front of you or that you've had a chance to review, are  
20      those all sites where you yourself were involved in  
21      uploading that information, or some of the sites where you  
22      uploaded it and other sites where -- through whatever  
23      process that is, they obtained the information and then  
24      published them?

25      A       Well, my -- my assistant is the one that specifically

Page 19

1 uploaded it to the sites. I'm not sure how specifically she  
2 does that because that's her job, but some would have gone  
3 through just uploading it into the Compass system and then  
4 it automatically syndicates, and some are directly inputted  
5 by my assistants.

6 Q And looking at those pages that are in front of you,  
7 those specific pages that are being offered into evidence,  
8 are you able to tell how each of those pages was put onto  
9 that site?

10 A I could find out that information but I don't have that  
11 information right now.

12 Q And just for clarity, some of the pages that are  
13 contained in that exhibit list the property as being under  
14 contract, which, of course, it is. Is there any difference  
15 in the, so to speak -- for a listing, for a property that is  
16 under contract as opposed to a listing for a property that  
17 is simply on the open market and nothing is pending at that  
18 point?

19 A The difference would be the status, obviously. It's  
20 still actively marketed. It's still online as an in-  
21 contract-listed, until it -- closes.

22 Q Okay. I apologize, I didn't mean to cut you off.

23 A Okay.

24 Q All right.

25 MS. HADDEN: Those are my only questions as to

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1       that exhibit. Thank you, Your Honor. I do still have an  
2       objection as to the... Oh, actually, one other question. I  
3       apologize.

4       BY MS. HADDEN:

5       Q       Is it correct that some of these sites have dropdown  
6       menus, so to speak. Where if you're looking at a listing  
7       initially, it will give you -- here's information about the  
8       property, and then you have a link where you can click to  
9       see more, for example, or click to see comparative home  
10      values, things along those lines?

11      A       Every -- every property -- every site is different.  
12      For example, if you're on Zillow, depending on where you are  
13      on Zillow, there are dropdown menus that would allow you to  
14      expand upon the description. But it's not a -- but  
15      everything is readily available for someone to see. That's  
16      just the way of -- the way things are advertised.

17      Q       And looking again at those specific pages in front of  
18      you -- because, obviously, there's a difference between the  
19      printed copy and the online access, to so speak, are the  
20      pages in front of you pages where each of those dropdown  
21      menus where they exist have been expanded, or are some of  
22      those still just tabs that have not been opened?

23      A       Well, so if we went to the Realtor.com advertisement --  
24      I think this is what you're asking me -- if you went to the  
25      Realtor.com advertisement and looked at it online, you could

Page 21

1 expand all of these areas. These property details, so on  
2 and so forth, to read more about the -- about the property.

3 Q All right. So, the items that are in front of you,  
4 Exhibit Number 3, that's not the expanded version for each  
5 of these websites -- it's a minimized, for lack of a better  
6 term, version, is that correct?

7 A It's the printed version but you could expand it  
8 online. I'm sure there's a way to print it and expand it on  
9 paper but, again, I'm not sure because I don't regularly  
10 print these. You know, we generally get the inquiries after  
11 people have already perused them.

12 Q All right, thank you.

13 MS. HADDEN: Your Honor, I do still have the same  
14 objection.

15 THE COURT: All right, the objection is overruled.  
16 Exhibit 3 on this trial record is admitted. For optional  
17 completeness purposes, which seems to be what the objection  
18 is going to -- or functional completeness, as some call it -  
19 - if the objecting party wanted to offer the portions of the  
20 information in the dropdown portions of the webpages that  
21 are not part of this record, then they could do so for  
22 optional completeness purposes. But the document itself is  
23 admitted. The pages are essentially repeats of the same  
24 information website to website. So Exhibit 3 is admitted.

25 (Plaintiff's Exhibit 3 Admitted into Evidence)

Page 22

1                   Mr. Nolan, anything further for Mr. Stanton in  
2 your direct case?

3                   MR. NOLAN: No, Your Honor.

4                   THE COURT: So then, continuing where you were,  
5 Ms. Hadden, on cross if you want to go into the main cross-  
6 examination?

7                   MS. HADDEN: Thank you, Your Honor.

8                   CROSS-EXAMINATION OF WESLEY STANTON

9 BY MS. HADDEN:

10 Q        Mr. Stanton, previously to working at Compass, you  
11 worked at Douglas Elliman, correct?

12 A        Correct.

13 Q        And as a member of Douglas Elliman as well as a real  
14 estate agent who specializes in the higher level properties  
15 in Manhattan, I assume you were familiar with 2 River  
16 Terrace before becoming involved in this case. Is that  
17 accurate?

18 A        Yes.

19 Q        Had you marketed properties at 2 River Terrace before  
20 this?

21 A        No.

22 Q        So, you were not involved in the purchase of the  
23 apartment in question back in 2016, is that correct?

24 A        (indiscernible)

25 Q        But you were working at Douglas Elliman at that time?

Page 23

1 A In 2016, yes, I was at Douglas Elliman.

2 Q All right. Now, correct me if I'm wrong, but you were  
3 the one in consultation with the Trustee who determined at  
4 what price point the apartment should be marketed, is that  
5 correct?

6 A Yes.

7 Q Could you tell us more about how you arrived at that  
8 determination of what the price for the apartment should be?

9 MR. NOLAN: Objection to the form of the question.  
10 It's over-broad and ambiguous and calls for a narrative.  
11 But if the Court wants to give the witness that latitude,  
12 I'll withdraw the objection.

13 THE COURT: The Court will allow him to testify as  
14 to how he and the Trustee determined the price at which to  
15 offer the condo (indiscernible) property -- but try to keep  
16 it succinct.

17 BY MS. HADDEN:

18 A We looked at comps, you know, in the area for Battery  
19 Park City and within the building. And from there, we  
20 derived a range at what we thought it would sell for.

21 Q And you marketed it at 5.25, is that right?

22 A Correct.

23 Q Now, 5.25 is lower than the price it had sold at in  
24 2016, correct?

25 A Yes.

Page 24

1 Q What was the reason for marketing at a lower price  
2 point?

3 A The market had fallen.

4 Q And has the market fallen, in your experience,  
5 throughout New York City or more in the Battery Park area?

6 A Generally, throughout New York City but, specifically,  
7 in the Battery Park area.

8 Q So, for example, you have a property listed on the  
9 Upper West Side at a higher price point, correct?

10 A Correct.

11 Q 375 West End Avenue listed at 6.250?

12 A Correct.

13 Q And that apartment does not have a river view, correct?

14 A Correct.

15 Q Whereas Apartment 12JK has a river view from both the  
16 bedroom and the living room/kitchen area, is that right?

17 A Correct.

18 Q What would be the differences in the price points  
19 between those two apartments, again, in your expertise as a  
20 real estate agent?

21 A It would be the same thing as saying -- comparing an  
22 apartment in New York City to New Jersey. Two totally  
23 different locations. They're not comparable whatsoever.

24 Q So, the West End is completely different from Battery  
25 Park even though they're in the same city, is that correct?

Page 25

1 A Yes. Also less than -- happens to be a completely gut-  
2 renovated \$2 million renovation in a penthouse apartment  
3 that's on the Upper West Side, which is a completely  
4 different location. It has every bell and whistle from a  
5 renovated perspective that one could want. It's also five  
6 bedrooms, not three. I mean, I could go on, if you want,  
7 but it's apples and oranges from a real estate perspective.

8 Q I would actually like to focus in on something you just  
9 said. All the bells and whistles you mentioned. What are  
10 the bells and whistles that were missing, so to speak, from  
11 Apartment 12JK?

12 A Well, it's got a lot of wear and tear on it. You know,  
13 most buyers would consider the apartment needing work.

14 Q What type of work did it need?

15 A There were some issues in the kitchen with the kitchen  
16 cabinetry, there was wear and tear on the floors, there were  
17 issues with the walls, the bathrooms were not brand new.  
18 Most buyers would want to renovate this to bring it up to --  
19 up to the times.

20 Q When you say issues in the kitchen, there are a couple  
21 of handles that had been removed?

22 A Hardware missing, there's scratches in the -- in the  
23 cabinetry. It's just not a brand new apartment.

24 Q Right. So, in your viewpoint, the fact that the --

25 A (indiscernible) -- it just is what -- it's a fact.

Page 26

1 Q In your viewpoint, the fact that the apartment is not -  
2 - you know, has not come straight off the line, so to speak,  
3 in other words, it does have some evidence that some  
4 individual has lived in it over the past few years, is what  
5 brings it from, say, the \$6 million range down to the low \$5  
6 million range, is that accurate?

7 MR. SCHARF?: Your Honor, objection as to Mr.  
8 Stanton -- to Mr. Stanton opining on whether anybody has  
9 lived there in the past few years.

10 THE COURT: So, invoking the one riot, one ranger  
11 rule, this is Mr. Nolan's witness so any objections would  
12 have to be from Mr. Nolan. I heard her question so I'm not  
13 taking it as him saying somebody was there 13 out of the  
14 last 21 days -- more to the age of the unit. But Ms. Hadden  
15 specifically asked the witness if he -- if he's aware of --  
16 if, as, and when someone resided in the apartment over the  
17 last -- unit over the last 12, 18, 24 months, you're  
18 certainly free to ask him that.

19 MS. HADDEN: No, Your Honor is quite correct. The  
20 focus of my question was not whether or not someone has been  
21 there in February of 2021, for example. It's more a  
22 question of is it the age/wear and tear of some of the items  
23 within the apartment that's driving your focus in terms of  
24 the price point of the apartment? Is that an accurate  
25 representation of your testimony?

1                   MR. NOLAN?: I'll object to the form of the  
2 question. It's an incomplete hypothetical and it  
3 mischaracterizes the witness's testimony.

4                   THE COURT: Do you want to rephrase it, Mr.  
5 Hadden?

6                   MS. HADDEN: Sure.

7 BY MS. HADDEN:

8 Q       Is it accurate to say, Mr. Stanton, that your testimony  
9 is that the apartment has sufficient wear and tear to bring  
10 it below the price point that you would have suggested  
11 marketing that were it in pristine, untouched condition?

12 A       Yes.

13 Q       Assume for a moment the apartment was in pristine,  
14 untouched condition. What then would you recommend -- or  
15 what would your professional opinion be as to the  
16 appropriate price point for the apartment?

17 A       I couldn't answer that question. I would have to see  
18 the renovation when it was done.

19 Q       So, is it -- if I'm understanding correctly, you're  
20 saying that the materials in the apartment -- for example,  
21 the décor in the kitchen -- you mentioned the kitchen as  
22 being an area of concern. Are you saying that it's outdated  
23 and that's why you're unable to make an estimation? Or --

24 A       The apartment was built in 2007, which is 14 years ago.  
25 14 years is a long time for a renovation to hold,

Page 28

1       particularly when there's -- it appears to me that whoever  
2       was living there did not take complete care of it.

3       Q       Okay.

4       A       But to say that it's the only reason that affected a  
5       price versus the Upper West Side apartment that you're  
6       referencing is not accurate.

7       Q       Okay. What are other things that affected the price,  
8       other than the wear and tear that you've mentioned?

9       A       The building is a land-lease building, which is a  
10      stigma in the industry, which knocks out a significant  
11      portion of buyers. The building is in Battery Park, which  
12      is a niche location, which knocks out another significant  
13      amount of buyers. And we're also still dealing with the  
14      effects of a pandemic.

15      Q       And you listed the property I believe on -- I believe  
16      it was April 2nd, although you may have testified April 3rd.  
17      But either April 2nd or April 3rd. And you were in contract  
18      as of April 23rd, is that right?

19      A       Yes.

20      Q       Again, in your experience as a real estate agent  
21      specializing in this area, is that a lengthy amount of time  
22      for a property to be on the market, a reasonable amount of  
23      time, or a short amount of time?

24      A       I wouldn't characterize it as anything. It depends on  
25      -- I wouldn't characterize it as any of them.

Page 29

1 Q How would you characterize it?

2 A I would say that we got the best value for it,  
3 regardless of time. Typically, apartments that sell quickly  
4 get the highest value because they're priced well.

5 Q And my question for you is, is this an apartment that  
6 sold quickly in your experience or not quickly in your  
7 experience?

8 MR. NOLAN: I'll object to the question. It's  
9 been asked and answered.

10 THE COURT: I'll allow it. Sustained.

11 BY MS. HADDEN:

12 A I -- what are we comparing this to? Every marketing --  
13 every marketing is its own. Every apartment is its own...  
14 I don't know how to answer that question.

15 Q So --

16 A There are apartments --

17 Q How many offers -- how many offers did you receive --

18 A There are apartments that sell in one day. There are  
19 apartments that sell in six months. There's apartments that  
20 sell in a couple weeks. I don't -- it really just -- it  
21 depends on too many factors to give you a definitive answer.

22 Q All right. So, am I correct then that there's no  
23 industry standard by which you can say any kind of a  
24 benchmark as to whether or not this apartment sold quickly?

25 A I'm sorry, I didn't hear the question. You...

Page 30

1 Q I apologize. I'll repeat it. Am I understanding then  
2 correctly that there is no standard by which you could say  
3 an apartment has been on the market for a long period of  
4 time or a brief period of time because each situation, as  
5 you say, is completely --

6 A I -- I'm sorry, it keeps freezing up.

7 Q All right.

8 A Can you repeat it? I apologize. It might be on my  
9 end, although it was fine before, so I was a little confused  
10 on...

11 Q Yeah, I haven't gone anywhere either so -- it's the joy  
12 of technology. I'll try again. Am I understanding  
13 correctly from your testimony that there is no standard  
14 within your experience, or industry standard within your  
15 experience, by which you could benchmark whether an  
16 apartment is moving quickly or slowly in terms of a sale?

17 A I think that if an apartment sells within 30 days, the  
18 marketing did its job. That's how I can -- I can clarify  
19 that. Although I would say every seller has their  
20 difference of opinion, is something selling quickly or not.

21 Q I'm sure that's the case. As to this particular  
22 apartment, I believe you said that you had received more  
23 than one offer, is that correct?

24 A That is correct.

25 Q How many offers in total did the Trustee receive?

1 A Two.

2 Q So, it's the \$4.8 million offer that was accepted, and  
3 I believe the other offer was \$4.7 million, is that correct?

4 A Correct.

5 Q And you said that there was a financing contingency on  
6 the other offer. What was the financing contingency?

7 A It was a 45-day financing contingency. I believe they  
8 were financing 80 percent, which was the maximum amount of  
9 reasonable financing that most -- that is standard in New  
10 York.

11 Q And the \$4.8 million offer is an all-cash offer?

12 A Correct.

13 Q And that's from an agent who specializes in the  
14 building?

15 A Correct.

16 Q Or represented by an agent who specializes in the  
17 building? Have you worked with him before?

18 A I have not. I know him but I have not -- I don't  
19 believe that we've done a deal together, no.

20 Q And you don't know anything about the buyer themselves,  
21 correct?

22 A No.

23 MS. HADDEN: I have no other questions for Mr.  
24 Stanton, thank you.

25 THE COURT: Any redirect?

1 MR. NOLAN: Yes, just briefly, Your Honor.

2 REDIRECT EXAMINATION OF WESLEY STANTON

3 BY MR. NOLAN:

4 Q Is it a fair statement, Mr. Stanton, that your goal was  
5 to get the highest and best price for the property?

6 A Yes.

7 Q Did you inspect the property at the time you took the  
8 listing?

9 A Yes.

10 Q Did you have a chance to walk through and inspect each  
11 of the rooms?

12 A Yes.

13 Q And you had a chance to do research on the comps for  
14 the building and the surrounding area?

15 A Yes.

16 Q And your determination to market the property was based  
17 upon your perception and your expertise in the industry?

18 A Yes.

19 Q And do you believe that the \$4.8 million all-cash offer  
20 is the fair market value price for this property as of April  
21 2021?

22 A Yes.

23 Q And one last question. Have you seen sales with  
24 respect to auctions?

25 A I have, yes.

1 Q And --

2 MS. HADDEN: I'm just going to object as being  
3 beyond the scope at this point, Your Honor.

4 THE COURT: That would be beyond the scope.

5 MR. NOLAN: I'll withdraw the question. No  
6 further questions, Your Honor.

7 THE COURT: All right, very well. Thank you. Mr.  
8 Stanton, you're free to leave the hearing if you wish.  
9 You're certainly welcome to stay.

10 THE WITNESS: Thank you, all. I appreciate it.  
11 Have a good day. Bye. Thank you.

12 THE COURT: I take that was option one. All  
13 right. So then we'll hear from Mr. Ehrenberg? Sir, would  
14 you identify yourself, please, so you'll become center  
15 screen?

16 MR. EHRENBURG: Good afternoon, Your Honor. I'm  
17 Howard Ehrenberg, the Liquidating Trustee for Orion  
18 Healthcorp.

19 THE COURT: All right. Mr. Ehrenberg, I will --  
20 are you also an attorney, is that correct?

21 MR. EHRENBURG: I am.

22 THE COURT: A practicing attorney?

23 MR. EHRENBURG: Yes, in California.

24 THE COURT: All right, so I'll waive the oath for  
25 you as an officer of the Court. All right, then, Mr. Nolan,

Page 34

1 do you have Mr. Ehrenberg's declaration? It's at Docket  
2 Item 966. The Court would make that declaration Exhibit 5  
3 for this record.

4 MR. EHRENBERG: It was an objection to an invoice  
5 from Douglas Elliman. It's referenced in the declaration.  
6 It's Exhibit 1 to the declaration. I think it's also  
7 contained in Mr. Stanton's affidavit. But, that aside,  
8 because of the objection -- Mr. Nolan, Mr. Scharf, whoever  
9 is taking the witness, if you want to establish any more  
10 foundation for that document I'll let you do so before  
11 ruling on that objection.

12 MR. NOLAN: Thank you, Your Honor.

13 DIRECT EXAMINATION OF HOWARD M. EHRENBERG

14 BY MR. NOLAN:

15 Q Mr. Ehrenberg, I'm going to refer you to Docket Number  
16 90, which is the Plaintiff's -- the Trustee's exhibits for  
17 the sale motion. It's Exhibit 5.

18 And I would ask the -- and it's identified for the  
19 record, Your Honor, as Douglas Elliman Property Management  
20 Invoices.

21 MS. HADDEN: And just for clarity sake, I think  
22 there was a single page of what is Exhibit 5 in Docket  
23 Number 90 in the adversary proceeding that was submitted as  
24 an exhibit to Mr. Ehrenberg's declaration, I believe, in the  
25 main proceeding. I think it may have been Docket Number

1 967.

2 THE COURT: Well, we have two different things, I  
3 think. There was a single page exhibit to Mr. Ehrenberg's  
4 original declaration, which is a one-page invoice on a  
5 Douglas Elliman form, and that is at Docket 967. And now on  
6 Docket 90 in the adversary proceeding, as Exhibit 5, there  
7 are multiple invoices?

8 MR. NOLAN: Correct.

9 THE COURT: Does the one-page -- is the one page  
10 that Ms. Hadden objected to part of the multiple pages in  
11 Exhibit -- what was marked -- what was called Exhibit 5 in  
12 the adversary listed exhibits?

13 MR. NOLAN: Yes, Your Honor. And I propose that I  
14 just keep them -- since it's repetitive, it's duplicative of  
15 what's in Exhibit 5 to Docket 90, I'll just lay a foundation  
16 and keep them altogether and make it easy for housekeeping  
17 matters.

18 THE COURT: All right, that'll be great. Thanks,  
19 Mr. Nolan. So, for record identification purposes, several  
20 pages of invoices, interactions, sub-marked Docket Item 90-5  
21 in Adversary Proceeding 20-8051 are all Exhibit 6 to this  
22 trial record. If you want to now -- if you're offering  
23 those exhibits, is there an objection to those, Ms. Hadden?

24 MS. HADDEN: I'd have the same objection to those,  
25 Your Honor, just as a group -- that I add to the single

1 page.

2 THE COURT: So if you want to lay a foundation for  
3 those, what is now Exhibit 6 to this trial record is not yet  
4 admitted. So, Mr. Nolan?

5 MR. NOLAN: Thank you, Your Honor.

6 BY MR. NOLAN:

7 Q Mr. Ehrenberg, looking at the Douglas Elliman Property  
8 Management invoices -- and for the record, I'm going to  
9 identify them as they're dated, March, April, May and June -  
10 - do you recognize those documents?

11 A Yes.

12 Q And what do they represent to you?

13 A Those are the invoices from the Homeowners Association  
14 for the monthly charges and related expenses.

15 Q And did you receive those -- those documents as the  
16 Trustee in this case?

17 A I did.

18 Q And what did you do with them?

19 A I reviewed them and then paid them for the current  
20 charges, not the charges prior to my taking possession.

21 Q Okay. And these invoices, are these invoices with  
22 respect to the property that is the subject of the hearing  
23 today?

24 A Yes.

25 Q And do you have an understanding of what these charges

1       are for for each respective month?

2       A      Yes.

3       Q      And what is that?

4       A      One charge is the HOA fee itself for the expenses of  
5       the association. Another that's called Pilot is actually  
6       the share of property taxes owed for this unit. And then in  
7       later months, there is also some assessments that were  
8       issued by the homeowners that were paid currently. And then  
9       there is some shared utility expenses.

10      Q      Thank you.

11                  MR. NOLAN: Your Honor, I'd like to move Exhibit 6  
12       into evidence.

13                  THE COURT: All right. I'll take it that the same  
14       objection still stands as to foundation. But the objection  
15       would be overruled. These are invoices that would have  
16       arisen after the Court's judgment -- (indiscernible) title  
17       to the property and the Trustee. At that vantage point the  
18       Trustee is nominally the owner of the property and is  
19       receiving bills and paying bills as owner. So that  
20       objection would be overruled.

21                  In addition, the Court does not find that there's  
22       any significant issue about the trustworthiness or  
23       credibility of these exhibits. So, the group of invoices in  
24       Exhibit 6 are admitted.

25                  (Plaintiff's Exhibit 6 Admitted into Evidence)

Page 38

1           THE COURT: Any other exhibits through Mr.  
2           Ehrenberg?

3           MR. NOLAN: Yes, Your Honor. On Docket 90,  
4           Exhibit 4, which is the New York County -- New York State  
5           County Clerk judgment. I don't know if there's an objection  
6           to this document or not. It's been the subject of other  
7           litigation. It was utilized without objection on Docket 55  
8           in the adversary as part of the summary judgment motion. It  
9           was Separate Statement of Fact 19, which was not disputed.  
10          But I'm more than happy to utilize this witness to identify  
11          and to lay a foundation for the judgment.

12          MS. HADDEN: That's a Court record, Your Honor. I  
13          have no objection to that exhibit.

14          THE COURT: All right, so for identification  
15          purposes, this is now Exhibit 7. For this trial record,  
16          it's the document sub-marked as Docket 90-4 in Adversary 20-  
17          8051. It is admitted as Exhibit 7.

18           (Plaintiff's Exhibit 7 Admitted into Evidence)

19          MR. NOLAN: Thank you, Your Honor.

20          BY MR. NOLAN:

21          Q       Mr. Ehrenberg, are you aware if there is a -- as the  
22          owner, if there is a lien on the property?

23          A       Yes.

24          Q       And the lien -- what lien -- what do you understand the  
25          lien to be for?

1 A It's for the judgment and the subsequently unpaid HOA  
2 fees.

3 Q And do you -- do you actually know or can give us an  
4 approximation as to what the dollar amount that's alleged to  
5 be a lien against the property?

6 A If I recall, I think it's about \$460,000, maybe more.  
7 \$470,000?

8 Q Yeah, and that lien exists and is... Strike that.  
9 With respect to that lien that's against the property, are  
10 you aware of whether or not anyone has attempted to  
11 foreclose or -- or sell the property?

12 A Yes.

13 Q And what's your -- what's your understanding has  
14 been... Or strike that. That lien would seek to undermine  
15 any attempt of the Trustee to sell the property. Is that a  
16 fair statement?

17 A Yes.

18 Q And are you aware of whether or not the property was  
19 subject to a sheriff's sale?

20 A I believe that it was.

21 Q And did the issue of a pending sheriff's sale have any  
22 impact on you with respect to your decision of whether or  
23 not to try and sell or liquidate the property?

24 A Yes, it did.

25 Q All right. Thank you.

1                   MR. NOLAN: I have no further questions, Your  
2 Honor.

3                   THE COURT: All right, very well. Ms. Hadden?

4                   MS. HADDEN: Thank you, Your Honor.

5                   CROSS-EXAMINATION OF HOWARD M. EHRENBERG

6                   BY MS. HADDEN:

7                   Q     Good afternoon, Mr. Ehrenberg.

8                   A     It's still good morning for me, but --

9                   Q     Oh, that's right. Good morning.

10                  A     Same to you.

11                  Q     Thank you. So, I have a couple of quick questions for  
12 you -- or hopefully quick questions for you. You took  
13 possession of the property as of March 1st, pursuant to the  
14 Court's order, is that correct?

15                  A     That's correct.

16                  Q     But you retained Compass on February 10th, is that  
17 right?

18                  A     About that date, yes.

19                  Q     And around that same date, you had the locks changed on  
20 the apartment, is that correct? Not you personally but --

21                  A     Yes, I had them changed, yes.

22                  Q     Okay. And --

23                  A     To protect the assets inside.

24                  Q     Okay. I didn't mean to cut you off. I'm sorry if I  
25 did.

1 A No, no.

2 Q What were you protecting the assets inside from?

3 A I wanted to make sure that nothing happened to the  
4 apartment when it was in my possession.

5 Q But it was not yet in your possession at that point, is  
6 that right?

7 MR. NOLAN: I'll object to the question to the  
8 extent it calls for a legal conclusion.

9 THE COURT: All right. Even though you are a  
10 lawyer, you're not testifying as a legal expert. Just a  
11 business reason for securing your (indiscernible) as of on  
12 or about February 10, 2020?

13 THE WITNESS: That's right. Subsequent to the  
14 Court's order awarding the property to the bankruptcy  
15 estate, I changed the locks, as I typically do.

16 BY MS. HADDEN:

17 Q And at that time, the lien from the board pursuant to  
18 that State Court judgment was still in effect, correct?

19 A Yes.

20 Q (indiscernible) And as well, the order of the  
21 Bankruptcy Court, Judge Trust, that had secured a number of  
22 assets associated with different Parmar entities, including  
23 this apartment, was still acting as a lien against that  
24 apartment? Had it been -- was it still in place at that  
25 time?

1                   MR. NOLAN: I'll object to the question as it  
2 lacks foundation, Your Honor.

3                   THE COURT: Would you rephrase the question, Ms.  
4 Hadden?

5                   MS. HADDEN: Certainly.

6 BY MS. HADDEN:

7 Q       Mr. Ehrenberg, you've been appointed the Liquidating  
8 Trustee in the overall bankruptcy in this case for quite  
9 some time now, correct?

10 A      Yes, a little over two years.

11 Q      All right. And in that capacity, were you aware that,  
12 among the other multiple proceedings that have gone on,  
13 there was an order from Judge Trust that secured or sought  
14 to secure a number of assets, in particular, real estate  
15 assets that were associated either with Mr. Parmar or with  
16 entities associated with Mr. Parmar?

17 A      Yes. Some of them are also subject to his criminal  
18 case.

19 Q      Yes.

20 A      And are under the control of the U.S. Attorney's  
21 Office.

22 Q      And that was the case with this apartment as well up  
23 until May 12th, is that correct?

24 A      That's correct.

25 Q      That's May 12th -- for clarity, May 12, 2021, this

1       year?

2       A       Yes. We knew of it, I believe, earlier than that but,  
3       yes, we knew that they were not going to claim it in their  
4       action.

5       Q       Okay. So, you had -- for lack of a better term,  
6       advanced notice that they were going to be abandoning it  
7       from the criminal case?

8       A       Yes.

9       Q       Okay. Do you recall when you learned that?

10      A       Not precisely. It was not long before.

11      Q       Do you recall if it was before or after February 10,  
12       2021?

13      A       My best recollection is it would've been before but I'd  
14       have to review my notes.

15      Q       I understand. And I believe in your declaration you  
16       testified -- and I'm using testified in that your  
17       declaration qualifies as part of your direct examination --  
18       that you'd received multiple offers for the apartment. By  
19       multiple offers, that was the two offers that Mr. Stanton  
20       discussed or were there other offers in addition to that?

21      A       There were no others that I'm aware of.

22      Q       All right, so it was the offer that was eventually  
23       accepted and gone into contract, and the \$4.6 million with  
24       the financing contingency, is that right?

25      A       Yes.

1 Q Do you recall how close to the time that the apartment  
2 was listed those offers were first received? In other  
3 words, was there a period of negotiation back and forth or  
4 were the offers received and then you went into contract  
5 almost immediately thereafter?

6 A My recollection is that Mr. Stanton told me that he was  
7 aware that there were potential buyers who were already  
8 familiar with this building, and upon being told of its  
9 availability might be willing to make an offer. So, I  
10 believe that there was not a great deal of time between when  
11 the listing went live and when we were made aware of the  
12 potential buyer.

13 Q Okay. So, this was not necessarily just someone paging  
14 through the internet, but perhaps at least someone who had  
15 come through that awareness in the building itself?

16 A I believe so. I think Mr. Stanton testified that he  
17 knew the broker who represented the buyer. So, I'm not sure  
18 exactly what the mode of contact was but yes.

19 Q I understand, okay. Thank you. Now... I apologize.  
20 You initially listed the property for 5.25 million, is that  
21 right?

22 A Yes.

23 Q And we've already heard Mr. Stanton's perspective on  
24 why that was the appropriate price point. What was your  
25 perspective as the seller as to why that was the appropriate

1 price point?

2 A I think strategically we were trying to place it a  
3 little bit higher than what he thought it was likely to go  
4 for on the somewhat hope that there would be a buyer willing  
5 to pay a little more than what he believed the likely sale  
6 price to be. So, I agreed to price it at that figure. But  
7 with an internal understanding that it was more likely to go  
8 for a somewhat lower price -- which turns out to be exactly  
9 what happened.

10 Q So, rather than going with the price low and hope for a  
11 bidding war strategy, you were aiming at the other side of  
12 that strategy where you're pricing higher than what you're  
13 anticipating. Is that your testimony?

14 A I don't know that we were talking about a bidding war.  
15 We were considering how fast we could find a buyer. My job  
16 as a Trustee is not to leave assets listed indefinitely.  
17 So, the idea was to price it so that we would get a buyer  
18 within 90 days. That's sort of my general benchmark for how  
19 long I like to have a property listed before I need to  
20 adjust the price. So, that was my thinking.

21 Q All right. So, you were looking for a swift sale as  
22 opposed to necessarily maximizing numbers. Is that  
23 accurate?

24 A I don't know that I'd say swift --

25 MR. NOLAN: Objection. (indiscernible) Sorry, I'll

1 just object to the form of the question.

2 BY MS. HADDEN:

3 A I wasn't looking for what you might refer to as a quick  
4 sale. I was looking for an efficient expeditious sale.

5 Q Okay. And you were aware at the time that you listed  
6 the apartment that the order of the Court, transferring  
7 ownership from 2 River Terrace, Apartment 12J, LLC had been  
8 appealed to the District Court, is that right?

9 A Yes.

10 Q And, in fact, your counsel has appeared in the District  
11 Court in that proceeding?

12 A Yes.

13 Q And I apologize, I had one other question that just  
14 passed right through my head. I want to see if I can get it  
15 back.

16 THE COURT: Sure, you can take a moment.

17 MS. HADDEN: Thank you, Your Honor, I appreciate  
18 it.

19 THE WITNESS: Your Honor, I'll tell you it's not  
20 easy to be a witness when you're also a practicing lawyer  
21 and following your lawyer's instructions to be succinct.

22 THE COURT: I have been told that lawyers are  
23 terrible clients, as a general rule. Nothing specific to  
24 this case.

25 BY MS. HADDEN:

1 Q All right, I think the only other thing that I had  
2 wanted to touch on briefly, Mr. Ehrenberg, was going back to  
3 the line of questioning -- line of questioning, I apologize  
4 -- about the Court's order. You had mentioned the  
5 Department of Justice having been involved in the apartment  
6 on and off throughout this case, is that right?

7 A I don't know what on and off means but, yes, they were  
8 involved in seizing certain assets of Mr. Parmar's.

9 Q On and off -- and I apologize, that was unfair on my  
10 behalf -- on and off as to this particular asset, Apartment  
11 12J.

12 A It was initially on their list of assets that they were  
13 seizing or in the process of trying to monetize, and then  
14 they made a determination to stop doing that as to this  
15 assets.

16 Q All right. And there were two different fronts that  
17 they were following originally, is that correct? There was  
18 an in-rem proceeding and the criminal proceeding?

19 A That's my understanding, yes.

20 Q And is it correct that the in-rem proceeding was  
21 abandoned earlier in time than the criminal proceeding --  
22 again, speaking particularly about this apartment?

23 A Regarding this apartment, yes, since the criminal  
24 proceeding is still pending.

25 Q The criminal proceeding is still pending, yes. My

Page 48

1 reference was more to the Department of Justice pursuing  
2 this particular apartment in each of those proceedings. In  
3 each of those proceedings it was abandoned -- well, in the  
4 in-rem proceeding, that proceeding has now come to a close.  
5 But in the criminal proceeding, it was abandoned in spite of  
6 the fact that the criminal proceeding is still ongoing. Is  
7 that accurate?

8 A I believe so.

9 Q All right. And these are all things that you're aware  
10 of in your role as the Liquidating Trustee?

11 A Very much so.

12 Q Now, there were other assets that had been transferred  
13 during and around the time of the go-private transaction  
14 from the Debtors that have not necessarily been pursued by  
15 you, is that correct?

16 MR. NOLAN: Your Honor, I'm going to object to the  
17 form of the question as well as it's outside the -- the

18 MS. HADDEN: It is, I apologize. I wandered  
19 outside the scope of the proceeding for a moment. I  
20 apologize.

21 THE COURT: All right (indiscernible) withdrawn  
22 then.

23 MS. HADDEN: It is withdrawn.

24 BY MS. HADDEN:

25 Q Mr. Ehrenberg, have you -- I realize you're in

1       California -- have you yourself seen the apartment,  
2       Apartment 12JK?

3       A      Only through photographs taken by my counsel.  
4       Q      And are there any significant characteristics or  
5           unusual characteristics that you would say were unique to  
6           this apartment, just based on those photographs? I  
7           understand you haven't been there personally.

8       A      No. My -- my impression was that it was a lived-in,  
9           somewhat warn apartment. It -- as Mr. Stanton said, it  
10          wasn't shiny and new.

11       Q      Did it have any waterfront views or city views or  
12          anything along those lines that you were able to observe?

13       A      I think it did have a view of water. I'm not sure what  
14          body of water.

15       Q      I understand again that you're in a different place and  
16          haven't been in the apartment, so...

17                   MS. HADDEN: I have no further questions for this  
18          witness. Thank you.

19                   THE COURT: Thank you. Any redirect, Mr. Nolan?

20                   MR. NOLAN: Yes, a couple questions, Your Honor.

21                   REDIRECT EXAMINATION OF HOWARD M. EHRENBERG  
22          BY MR. NOLAN:

23       Q      Mr. Ehrenberg, as the Trustee of the Debtor, Orion  
24           Healthcorp, did you -- was it your perspective to sell the  
25           property at its highest and best use?

1 A As a condominium? Yes.

2 Q Yeah. And -- and why is that?

3 A I don't think I ever considered selling it as anything  
4 other than a condominium?

5 Q Did you want, though, to maximize the price -- the  
6 price that you could get for the apartment?

7 A Yes, in consideration of all of the factors surrounding  
8 it, yes.

9 Q Right. And, ultimately, if this asset is liquidated,  
10 is it a fair statement it would be subject to being  
11 distributed to unsecured creditors, the proceeds?

12 A Under the confirmed plan -- I'm still in the process of  
13 paying off the secured debt owed to the bank group. So,  
14 depending on the timing of when this money would arrive, it  
15 will either go first to the bank group or then -- it'll then  
16 flow into the unsecured pool.

17 Q Okay. And as far as trying to -- or strike that. And  
18 you sold resident -- residential or commercial property  
19 previously -- this is not your first rodeo, correct?

20 A No, it's not. I have.

21 Q Okay. And in this particular case, you determined,  
22 being out in California, that you wanted someone who had  
23 expertise in the Manhattan market, is that a fair statement?

24 A Yes.

25 Q And, based on your prior experience, did you believe

1       Mr. Stanton fit the bill on somebody who had intimate  
2       knowledge as to the residential market in Manhattan?

3       A       Yes. Mr. Stanton had represented me previously in an  
4       unrelated case.

5       Q       And did you find his services were adequate in the  
6       other case?

7       A       Yes.

8       Q       And did you rely on Mr. Stanton and the Stanton Hoch  
9       group's expertise in selling this property?

10      A       Yes.

11      Q       And do you have any -- any reason to believe that the -  
12       - the offer that is before this Court of 4.8 million in cash  
13       is not the best possible or fair market value offer for this  
14       property as of April 2021?

15                  MS. HADDEN: Objection to the form of the  
16       question. It calls for speculation.

17                  THE COURT: Would you rephrase the question,  
18       please?

19                  MR. NOLAN: Yes, Your Honor.

20       BY MR. NOLAN:

21      Q       Based on your involvement with the property and your  
22       utilization of Mr. Stanton and his real estate team to  
23       market the property, do you believe that the offer that you  
24       received for 4.8 million in cash was the best offer you  
25       could receive in selling the property?

1 A Yes.

2 MR. NOLAN: No further questions, Your Honor.

3 THE COURT: I have one, Mr. Ehrenberg. Has -- has  
4 anyone offered more than \$4.8 million cash, either before  
5 the contract was entered into, or since the contract was  
6 entered into?

7 THE WITNESS: No. No one has. And that's why I  
8 wanted it to remain listed throughout the process until we  
9 got to this court hearing.

10 THE COURT: All right. So, the property is still  
11 listed, even though it's listed as under contract?

12 THE WITNESS: That's correct.

13 THE COURT: Does either side have any further  
14 questions to Mr. Ehrenberg, based on the Court's questions?

15 MS. HADDEN: I -- just one question based on the  
16 Court's question. And, Mr. Ehrenberg, you may or may not be  
17 able to answer this. When a property is listed for sale and  
18 is then under contract, doesn't that listing remain active  
19 until the sale goes through because contracts do sometimes  
20 fall apart?

21 THE WITNESS: Yes.

22 MS. HADDEN: Thank you.

23 MR. NOLAN: No questions, Your Honor.

24 THE COURT: Thank you. Mr. Ehrenberg, you are  
25 excused as a witness. You're obviously welcome to stay for

1 the hearings if you wish to do so.

2 THE WITNESS: I think I'll take option two and put  
3 myself on mute.

4 THE COURT: All right. Is there any further  
5 evidence being offered by either side (indiscernible) with  
6 the sale motion or (indiscernible) appeal?

7 MR. NOLAN: No, Your Honor.

8 MS. HADDEN: No, Your Honor.

9 THE COURT: All right. All right, what I'm going  
10 to do is this: I'm going to take brief arguments on the  
11 same motion and the stay pending appeal motion. I'm going  
12 to first address, though, the motions that relate to the  
13 court's partial judgment granting the relief that was  
14 docketed on March 1, 2021 in the adversary proceeding 28-  
15 0851.

16 It does appear to the Court, in the best interest  
17 of justice and in the speedy and efficient administration of  
18 the adversary proceeding, as well now as it relates to  
19 issues arising in the main case, for the Court to make the  
20 judgment docketed at Docket 64 a final judgment for appeal  
21 and all other purposes, and then to sever out into a  
22 separate adversary proceeding the remaining claims in that  
23 adversary proceeding for future and further determination.

24 The Court does that for a couple of reasons. One,  
25 it simplifies the appeal that the Defendant, 2 River

Page 54

1       Terrace, Apartment 12J, is wishing to prosecute, which it is  
2       certainly entitled to do so. And it also severs out parties  
3       who remain in the adversary proceeding as to the claims that  
4       have yet to be adjudicated and would not be and need not be  
5       involved in the appeal. So, the process is the judgment  
6       entered March 1st will become the final judgment in 20-8051.  
7       The remaining claims will be severed out and assigned a  
8       separate adversary proceeding number or we'll issue an order  
9       to that effect so that the other claims and issues may move  
10      forward in due course.

11                  With that -- with that said, then I'll take  
12       argument first from the Trustee on the sale motion; then  
13       from 2 River Terrace in opposing the sale motion and in  
14       asking for a stay pending appeal. And then back to the  
15       Trustee on the sale motion and in opposition to the stay  
16       pending. So, Mr. Nolan?

17                  MR. NOLAN: Yes, Your Honor. Mr. Scharf, I  
18       believe, is going to argue the sale motion. We've kind of  
19       split duties here, Your Honor. And then when you address  
20       the issue of the stay pending appeal, I'll handle that  
21       piece.

22                  THE COURT: All right, fair enough.

23                  MR. SCHARF: Thank you, Your Honor. Ilan Scharf,  
24       Pachulski Stang Ziehl & Jones, on behalf of the Trustee with  
25       the sale motion. Your Honor, we are here today on the

1 motion to sell the apartment located at 2 River Terrace,  
2 Apartment 12J, which we're referring to as the Property.

3 There is one objection from 2 River Terrace,  
4 Apartment 12 J, LLC, who we'll refer to as the Trustee, the  
5 Transferee or the Defendant, then we'll get to the objection  
6 in a moment. And, Your Honor, I think there are a number of  
7 matters based on the testimony you've heard that are really  
8 not in dispute with respect to this property. There are  
9 some matters that clearly are going to be in dispute and  
10 we'll address those.

11 The Trustee obtained possession of the apartment  
12 after the Court's ruling was read into the record on  
13 February 9, 2021 in Adversary Proceeding 20-08051. As of  
14 that date, February 9th, the property was encumbered by a  
15 lien that was asserted by the condominium board for unpaid  
16 taxes, common charges and fees in the amount of  
17 approximately \$463,000. And that amount may increase and,  
18 frankly, the Trustee is incurring ongoing charges and is  
19 paying current charges that are -- that arise since the  
20 Trustee took possession of the apartment.

21 The board also obtained the judgment against the  
22 Defendant in the approximate amount of \$200,000, which was  
23 part subsumed by the lien. In addition, the board had  
24 scheduled a sheriff's sale for the apartment prior to the  
25 Trustee obtaining possession. That sheriff's sale has been

1 adjourned from time to time but is still out there. And  
2 given the nature of sheriff sales, there's a substantial  
3 risk that if this property is sold through that process,  
4 we'll be arguing over how to split crumbs as opposed to how  
5 to split \$4.8 million.

6 The Trustee's possessory right was then  
7 memorialized in a judgment that was entered by the Court on  
8 March 1, 2021. That's Docket Number 64, I believe, in the  
9 adversary proceeding -- or 69 in the adversary proceeding.  
10 Defendant did not turn over any keys or access cards to the  
11 property, notwithstanding Your Honor's instructions to do so  
12 in the order. Therefore, the Trustee replaced the locks and  
13 took possession of the apartment.

14 The Defendant appealed. The Defendant -- and  
15 we'll address the issues regarding the statement and appeal  
16 when that motion is heard.

17 The Trustee's charge in this case is to liquidate  
18 assets and distribute net recoveries to creditors. In light  
19 of that duty, the Trustee expeditiously undertook a sale of  
20 the property. He retained Compass and Stanton & Hoch came  
21 as real estate agent, based on their extensive expertise  
22 selling real estate in Manhattan. I believe that expertise  
23 was in full display as Mr. Stanton was questioned on various  
24 comps as well as the record of their -- the brochure  
25 explaining who they are. But Your Honor clearly saw today

1       that Mr. Stanton has a deep understanding of Manhattan  
2       property and how to market the property and maximize value.

3                  The Compass team marketed the property, as it was  
4       described in the sale motion. They advertised the property,  
5       they showed the property, and they obtained two offers for  
6       the property and ultimately selected the buyer with an offer  
7       of \$4.8 million, and the Trustee accepted that based on a  
8       number of factors, including it was the highest offer from a  
9       monetary perspective. It's also an all-cash offer that is --  
10      - that, in comparison to the \$4.6 million 80 percent  
11      financing contingency offer that is being held as a backup  
12      offer. No other higher or better offers came in, so this is  
13      the maximum we could obtain for the property.

14                 In addition, Mr. Stanton's testimony made it very  
15      clear that the marketing process was appropriate. The  
16      marketing process obtained the best property -- the best  
17      sales price. And the fact that the Defendant purchased the  
18      property for a higher value well before the COVID-19  
19      pandemic is clearly -- is of no consequence. This is a sale  
20      that was appropriate under the circumstances.

21                 In addition, while we are often -- we often push  
22      for auctions and undertake an auction process in bankruptcy  
23      cases, in this case, given this market, given the advice  
24      received by the Trustee, as well as the Trustee's own  
25      expertise in selling properties over -- as described in his

1 declaration, which constitutes -- sorry?

2 THE COURT: I have a question. And it may cross -  
3 - cross the streams, so to speak, as between what you and  
4 Mr. Nolan are going to present, but why not -- I'm not  
5 saying I'm going to do this. This is a capital I, capital F  
6 type question. But why not at this juncture essentially  
7 treat the sale as if it were a sale free and clear of liens,  
8 treat the appeal, if you were 2 River Terrace, as if it were  
9 a lien. Give that appeal some time to percolate. If they  
10 win on appeal, they get the money from the property; if they  
11 lose on appeal, the estate keeps it. As a way of letting  
12 the process go forward, monetize the asset but let 2 River  
13 Terrace prosecute the appeal.

14 And if I'm reversed -- in the District Circuit  
15 Court, the money will be sitting there, at least for some  
16 reasonable period of time, for them to prosecute that  
17 appeal.

18 MR. SCHARF: Sure, I think the estate -- and this  
19 probably does cross across both -- both motions -- but, Your  
20 Honor, I think that the estate would be highly prejudiced by  
21 doing that. First, there are -- there is a substantial  
22 amount that's owed to the condo board. That lien isn't  
23 going anywhere and --

24 THE COURT: Oh, yeah -- no, that's -- I'm sorry.

25 In the Court's question -- and I did not articulate that --

1       that judgment's going to be paid. No matter who owns the  
2       property, that judgment lien has to be paid. That would be  
3       off the table in the Court's hypothetical.

4                    MR. SCHARF: Sure. And then on top of that, Your  
5       Honor, the Trustee would incur fees -- has been incurring  
6       fees, professional fees associated with the apartment,  
7       recovery fees. Those will continue to be incurred -- and  
8       has also incurred broker fees that he'd have to pay. He'd  
9       have to pay the broker fees, I think, once the apartment is  
10      sold. And, to the extent Your Honor goes that way, that  
11      really should come out of the apartment as well.

12                  And Your Honor -- Your Honor certainly has the  
13      right to do that, but the Trustee should be able to use this  
14      cash unless there's the ability to get a stay pending  
15      appeal. Really, Mr. Parmar has tied up this apartment for a  
16      number of years, and the Trustee needs to -- has tied up  
17      this apartment for a number of years. There's going to be --  
18      and if anybody's taking the risk or the burden of putting up  
19      money in order to avoid a sale or hold this money hostage,  
20      to the extent he's going to get a stay pending appeal, which  
21      is the effect -- one of the effects of doing this where you  
22      attach the proceeds, Mr. Parmar should put up a bond and not  
23      tie up the estate's assets any further.

24                  I believe Mr. Ehrenberg also has his hand up.

25                  THE COURT: Well, he doesn't get to talk. He's

1       got fancy lawyers to do that.

2                    MR. SCHARF: But he can't whisper in my ear today,  
3 Your Honor.

4                    MR. EHRENBERG: My counsel may not be thinking  
5 also that under the plan, the secured bank tranche continues  
6 to accrue interest. So, I've been trying to distribute  
7 money to them as quickly as possible. So, if I had \$4-1/2  
8 million to distribute and I couldn't, then interest will  
9 continue to accrue until the bank group is paid in full.

10                  THE COURT: So, as a recovery action, would these  
11 proceeds potentially -- because I'm not going to tie you  
12 down because this wasn't part of the homework assignment --  
13 but are these proceeds potentially subject to the -- to the  
14 bank's rights under the plan to --

15                  MR. EHRENBERG: Yeah, all of the monies that I've  
16 been recovering are being distributed according to the plan.  
17 And so I've distributed, I think, over \$30 million thus far.  
18 As the Court will recall, the Destra funds are still being  
19 held in trust. But if I had the funds from this  
20 liquidation, I would immediately distribute the majority of  
21 it, leaving a small amount behind for expenses. But most  
22 would get distributed to the banks and reduce their debt.

23                  THE COURT: What's the accrual rate to the bank  
24 group under the plan, if you recall?

25                  MR. EHRENBERG: It changes, and it has gone down

Page 61

1 over the last two years, with interest rates. My best  
2 recollection is that it's currently 5 percent.

3 THE COURT: All right. Thank you, Mr. Ehrenberg.

4 MR. EHRENBERG: Sure.

5 THE COURT: All right. I want to flip the script  
6 and talk to Ms. Hadden about this question because I've  
7 found in my 35 years -- it makes me feel old saying that --  
8 in doing this, and especially the last 13 wonderful years as  
9 a judge, it's sometimes helpful for the lawyer to know what  
10 the judge is thinking as opposed to what they want to argue.  
11 So, why don't we talk about what the judge is thinking, and  
12 I'll let you go back to what you want to argue.

13 But, Ms. Hadden, let me flip it to you and ask you  
14 essentially the same question because this does cross the  
15 stream between the sale itself and your client's request for  
16 a stay pending appeal. 2 River Terrace doesn't walk, and  
17 talk, and breathe. And I know the Supreme Court has said  
18 that corporations are people too and have certain rights  
19 incident. But it's not -- it is not living in the  
20 apartment. There's no flesh human (indiscernible) the  
21 claims as to be their homestead or some other inherent right  
22 of occupancy.

23 There is an enormous judgment lien that's not  
24 getting any smaller. No offense, Mr. (indiscernible), to  
25 your client. So, why not monetize the asset, hold the net

1       proceeds, and you can talk about what net means for some  
2       reasonable period of time, and maybe put some other  
3       conditions on this while you all prosecute the appeal -- at  
4       least to the District Court on whether or not the Court was  
5       wrong in granting summary judgment invested title with the  
6       Trustee.

7                  MS. HADDEN: So, although you're correct, Your  
8       Honor, that my client is a corporation and -- to the extent  
9       that the corporation is a person too, the person who  
10      represents that corporation or that LLC is very attached to  
11      this apartment. He loves the view, he likes the building.  
12      Although Mr. (indiscernible) may not believe that, it's  
13      actually true.

14                 He's commented on some of the neighbors who have  
15      apartments either above or below. So, he's very attached to  
16      the location itself. And the location itself, while both  
17      Mr. Ehrenberg and Mr. Stanton pointed out that there is some  
18      wear and tear on the apartment just by virtue of its having  
19      been built -- I believe Mr. Stanton said in 2007, and I have  
20      no reason to question that -- so, say, 13-14 years ago --  
21      despite that, he's very attached to the apartment itself.  
22      And it is a unique asset.

23                 I mean, obviously, real property does have unique  
24      characteristics and unique fixtures, particularly where it's  
25      something that's not, you know, a row house or one of those

1 properties where you can have it prefabricated and put  
2 together next to 20 other buildings that look exactly the  
3 same. This is a unique asset with a unique view, unique  
4 characteristics. So, for that reason, he's very opposed to  
5 the idea of monetizing the asset and just having it be a  
6 fight over money. He's very invested in the fight over the  
7 location itself.

8 It's certainly true that he hasn't been inside of  
9 the apartment -- and, again, Mr. (indiscernible) and I would  
10 be on opposite sides of the fence about the reasoning behind  
11 that -- and I'm not trying to get into that at this point at  
12 all. But he is very interested in the location itself.

13 THE COURT: In the -- in the purposeful choice of  
14 the word invested in this property, in order to either get a  
15 stay pending appeal or prevent the sale of the property --  
16 because the evidence before the Court is this: This is the  
17 (indiscernible) -- this offer is the only game in town.  
18 There's no higher offer, there's no better offer. The  
19 Debtor's not come forward, the Defendant's not come forward,  
20 nobody's come forward with a better offer.

21 And so as you know -- as you all know, the two  
22 bankruptcy are how much and when? And the how much question  
23 is answered with \$4.8 million. The when is pretty soon, in  
24 terms of what's before the Court.

25 So, is whoever is behind the 2 River Terrace

Page 64

1 entity prepared to pay off the \$470,000 judgment and post a  
2 bond in the neighborhood of \$5 million to preclude the sale  
3 form going forward? Because that's basically what it's  
4 going to take.

5 MS. HADDEN: I had discussed with him posting a  
6 bond, at least in the judgment amount, and he certainly was  
7 prepared to do that. I had not discussed with him posting a  
8 bond in the full \$5 million amount. I don't know that he  
9 has the capacity to do that simply because, as everyone is  
10 aware, so many of his assets have been frozen based on the  
11 criminal case.

12 I think if he does have the capacity, it is  
13 something that he would be willing to do because I know that  
14 he does want to try to preserve this asset. It's simply a  
15 question of whether or not it's logistically possible  
16 without running afoul -- afoul of Department of Justice  
17 guidelines. So, I would have to investigate that to see if  
18 it was possible to post a bond for the entire amount of the  
19 apartment as well as paying off the full judgment.

20 MR. NOLAN: But, Your Honor --

21 THE COURT: Isn't that really all that's behind  
22 Door Number Two? I mean, Door Number One is I approve the  
23 sale, the sale closes, no strings attached, Mr.  
24 (indiscernible) client is paid in full in accordance with  
25 its rights under the State Court judgment. Closing costs

Page 65

1 are paid, the funds are readily available to the estate.  
2 The appeal goes forward. As it goes forward, obviously, on  
3 the timing as would be appropriate for the District Court.  
4 That's their jurisdiction, not mine. That's Door Number  
5 One.

6 Door Number Two is a substantial bond in the  
7 amount of the sale price plus interest that's being accrued  
8 on the obligations of the estate under the confirmed plan,  
9 and payment of the judgment in full with Mr. (indiscernible)  
10 client. That's Door Number Two. There is no Door Number  
11 Three.

12 MR. SCHARF: Before Ms. Hadden speaks, Your Honor,  
13 I know I'm not on the motion itself, but I want to just  
14 point out to the Court that the amounts we're talking about,  
15 even the 470,000, are less than what is actually owed to the  
16 condominium. The actual payoff amount will be determined at  
17 the time the payment's ready to be made. But their share of  
18 poundage fees that need to be paid, their attorneys' fees  
19 that are accruing under the bylaws, and the lien is both not  
20 only under the judgment but under a recorded common charge  
21 lien with the New York City Register's Office, which accrues  
22 all amounts unpaid through the date the lien is paid in  
23 full.

24 I just want the record to be clear on that. We're  
25 using a \$470,000 number that is not an accurate payoff

1 amount at this time.

2 THE COURT: What is the hand grenade distance from  
3 that number to a more approximately correct number? Is it  
4 bigger than a breadbox?

5 MR. SCHAFER: I have to say that I haven't computed  
6 it because it just keeps on rolling, so to speak. I did  
7 that computation for Mr. Nolan. Mr. Nolan, was that about  
8 three, four months ago, maybe, I had sent you an e-mail? I  
9 could dig it up while Your Honor continues.

10 THE COURT: All right. And the intention of the  
11 discussion of a 470 number was for ballpark purposes, not  
12 for, you know, precisely binding your client down. That's  
13 generally the number that's been percolating.

14 MR. SCHAFER: I understand. I just wanted it to be  
15 a little clearer on the record so that we're not just  
16 accepting that, but with Your Honor's caveat, I understand.  
17 In the meantime, I'll -- I will go on mute and see if I can  
18 try to get a better sense of where it stands today.

19 THE COURT: All right. Very well. Thank you.

20 MR. SCHAFER: Thank you.

21 MS. HADDEN: In the meantime, I've reached out to  
22 my client as well to see if I can confirm his ability to  
23 meet those parameters. I realize his concern, of course,  
24 is, say, with door number one as Your Honor described it,  
25 the Court approves the sale, the sale goes through, the

Page 67

1 apartment doesn't leave obviously because it's a fixed set  
2 of real estate but it goes to another owner and is no longer  
3 in the picture and no longer recoverable by any means to the  
4 LLC, and then the district court sees our viewpoint, the  
5 angels sing and comes down with a judgment saying, no, this  
6 never -- this property never should have gone over to the  
7 Trustee, it still belongs to the LLC, that leaves us in a  
8 situation where it's really, from my client's perspective,  
9 impossible for the LLC to be made whole.

10 The only thing that the LLC would be looking at at  
11 that point would be recovering a sum of money lower than  
12 what it paid for the apartment and not having the apartment,  
13 and that's the reason, of course, for us seeking the stay.

14 THE COURT: I'm not going to be determining that  
15 this particular property is so unique that it should for  
16 that reason alone be subject to a stay pending appeal. As  
17 much as an individual who may or may not be an owner or  
18 controlled purchaser of 2 River Terrance might feel strongly  
19 about this apartment, it is not so unique, so unusual, so  
20 vested with having lived in, raised family, and things of  
21 that nature, that I'm going to find it to be so unique that  
22 for that reason alone either the sale motion should be  
23 denied or a stay pending appeal should be granted.

24 So, again, that was door number three. There is  
25 no door number three. It's either sold and (indiscernible)

Page 68

1 fighting over the proceedings during -- unless the District  
2 Court stays it first, which is always an option, or the  
3 judgment Debtor pays the -- pay the judgment lien that's  
4 current and threatening the property with the sheriff's  
5 sale, posts a substantial bond in the \$5 million range, to  
6 secure a stay pending appeal, and then we'd have to address  
7 what happens with the ongoing accruing monthly charges that  
8 right now the liquidated trust is paying.

9 MS. HADDEN: All right. I guess my response to  
10 the ongoing charges would simply be that the liquidating  
11 Trustee chose to take on a property that has ongoing  
12 charges, that it was well aware were in existence and were  
13 in fact part of an accruing judgment, so it's not like it's  
14 been a mystery to any of the parties involved that those  
15 continuing charges were something that would be a factor,  
16 and if, for example, the Trustee had listed the property and  
17 was still awaiting a buyer, he would still be paying those  
18 charges because he chose to take on this particular asset as  
19 opposed to an asset that doesn't have those particular forms  
20 of liabilities, and I think that's one of the reasons why  
21 the Trustee is trying to move as swiftly as possible, you  
22 know, not giving the apartment away but also not necessarily  
23 taking a route that would look for the highest price but a  
24 route that would look for the best price he can get quickly.

25 THE COURT: All right. Thank you.

Page 69

1           MAN 1: The Trustee didn't choose to take on a  
2 property with (indiscernible). The Trustee chose to recover  
3 an asset that had been fraudulently transferred to 12JK  
4 using estate money that was taken out of the estate. So,  
5 we're not here because the Trustee chose to go over a  
6 property with (indiscernible). The (indiscernible) was  
7 created by Ms. Hadden's client.

8           THE COURT: Because I've crossed streams into the  
9 stay pending appeal now, Mr. Nolan, do you want to address  
10 that aspect? And again (indiscernible) many of you -- many  
11 attorneys have argued (indiscernible) many times in 13 years  
12 now. In my ongoing interest, and not being cryptic, Mr.  
13 Nolan, since the stay pending issue was delegated to you  
14 (indiscernible) work, do you want to address the issues that  
15 the Court has raised on them?

16           MR. PITTIINSKY: Your Honor, if I could just  
17 quickly chime in, I would say that the amount owed to the  
18 condominium is closer north of 500,000 at this point. I  
19 found in an e-mail 470 back about a year ago, and under New  
20 York law, that judgment is running 9 percent per year,  
21 probably the best rate of return that exists right now as  
22 things go, and of course we have the actual lien itself.  
23 So, I would say, as you say grenade guess, at least 500,000.

24           THE COURT: All right. Thank you. All right.  
25 Mr. Nolan?

1                   MR. NOLAN: Yes, Your Honor. I set forth in our  
2 papers, Your Honor, that to stay a judgment pending appeal  
3 is only granted in limited circumstances. It's the  
4 exception. It's not the rule. In Re: Paolo Gucci set forth  
5 that ruling.

6                   And it's based on four elements that the Court  
7 should consider. And the law in New York and the federal  
8 rule -- and the federal rule is very clear that the moving  
9 party, since it's an exception, has to satisfactorily  
10 evidence all four factors to the Court. That's In Re: Taub  
11 (2010), Bankruptcy Lexis 3458 (E.D.N.Y. 2010).

12                  And my papers, opposition papers, acknowledged  
13 that Mr. Parmar's argument with respect to staying the  
14 appeal is probably all in the one single bucket that he will  
15 be harmed.

16                  But before I address that element, I think we have  
17 shown to the Court that three of the elements are  
18 unequivocally, or at least the evidence shows, that they're  
19 clearly on the Trustee's side of the ledger.

20                  Whether a party will suffer substantial injury if  
21 the stay is issued, Mr. Parmar's opinion was it's just the  
22 Trustee. He's caused this problem. That's not an accurate  
23 statement.

24                  There is the Trustee, the creditors of the estate,  
25 the homeowner's association who has been a bank for three

1 years carrying this debt. There's more parties involved  
2 than just the Trustee.

3 The third element, whether the movant has  
4 demonstrated a substantial possibility of success on appeal.  
5 I've submitted case law to the Court that that is the most  
6 significant factor of the four factors. It's not whether  
7 the movant will suffer irreparable -- or suffer injury, and  
8 I don't see any issue that has been raised in appeal that is  
9 different than the issue that was presented before this  
10 Court.

11 These are not complicated issues. It goes to the  
12 Court's function as the gatekeeper. The circuit authorities  
13 are very clear. It's not lower court authority but the  
14 circuit authorities in the U.S. Supreme Court are very clear  
15 on what a judge should consider, that it must be admissible  
16 evidence. So, I believe, Your Honor, that the -- Mr. Parmar  
17 has not carried his burden as to the third element either.

18 And then the fourth element, Your Honor, is a  
19 public interest served in granting a stay of the adversary  
20 proceeding before Your Honor? Unequivocally, I don't think  
21 it has been. I think the Court is laboring with the  
22 challenge to keep the homeowner's association and Mr.  
23 Pittinsky -- their interests addressed. They're also a  
24 party in interest even though they're not a party to this  
25 lawsuit. They have initiated state court legal proceedings.

Page 72

1 I set forth authority to the Court that it is in the public  
2 interest of the Court to expedite and to efficiently resolve  
3 litigation. The Trustee's estate is also a factor that  
4 falls into the public interest, Your Honor.

5 The expeditious and efficient handling of  
6 bankruptcy matters and distribution to the trust, those are  
7 also matters that are worthy of being satisfied under the  
8 public interest element.

9 We set forth three specifically public interests  
10 that are served in denying this appeal. I think the second,  
11 third, and fourth elements outlined in In Re: Taub warrant  
12 against granting the motion.

13 And then we come to the issue which Ms. Hadden has  
14 raised, whether the movant will suffer injury, yeah, that's  
15 a -- I won't sugarcoat it. That is an issue. In my  
16 experience, when a judgment goes against me, most clients  
17 will have to have a tough determination, decision if they're  
18 going to appeal it, and if they're going to appeal it, you  
19 better stay the underlying proceedings because the law is  
20 that until that decision is overruled, the decision of the  
21 underlying court is the decision.

22 And in this case, they waited until after the  
23 liquidating Trustee marketed, sold the property. It's a  
24 number of months later. We're at the end of the road here.  
25 We have a willing buyer, \$4.8 million all cash. It's a

1 dream come true to get an all cash offer. It's not the  
2 commonplace, and so yes, we're in a precarious position  
3 right now, Your Honor, but the Trustee would submit it's not  
4 because of the Trustee moving this case along and selling  
5 the property. It's because the concept to fight this sale  
6 came into place, and that raised the issue of the bond and  
7 the appeal and probably is making Mr. Parmar make a decision  
8 now in June of 2021 that he probably didn't want to decide  
9 back in February of 2021.

10 And just like I tell my kids, you know, when you  
11 have a cavity and you don't deal with it, it doesn't get  
12 better with time. You know, you need to deal with the issue  
13 then and there, and I would submit to the Court on this  
14 element of whether the movant will suffer injury, that  
15 injury has been hanging over the defendant and Mr. Parmar  
16 for quite a long time. The sheriff's sale was lurking in  
17 the background at the time I got involved, and I had the  
18 pleasure of talking to Mr. Pittinsky at the time who told me  
19 that, you know, we're owed a lot of money and this place is  
20 going to be sold.

21 And then for the Trustee, we were playing defense  
22 trying to, you know, move this case along and stop the  
23 sheriff's sale so we could get the highest and best price or  
24 at least get an adjudication of the merits.

25 So, in sum, Your Honor, I would submit that the

Page 74

1 harm that the movant will suffer is created based on what  
2 Mr. Parmar and the defendant has done by not paying for  
3 three years' worth of upkeep. He essentially took the  
4 position of self-help that he wasn't going to pay. It put  
5 this asset, \$5.6 million asset of the estate, in jeopardy  
6 because that's what the estate paid for it, and justice is  
7 not served by allowing the stay of this appeal.

8 THE COURT: Thank you, Mr. Nolan. Anything  
9 further, Ms. Hadden?

10 MS. HADDEN: Just very briefly, Your Honor. I  
11 think I did address all of the four factors in my papers, so  
12 I won't go over them in exhaustive detail, but since they  
13 were just raised by Mr. Nolan, just very briefly, of course  
14 there's the question of irreparable harm to the movant,  
15 which as Mr. Nolan and I disagree on that particular aspect,  
16 I (indiscernible) disagree on all four factors. That's why  
17 we're on opposing sides, sort of our jobs.

18 THE COURT: Well, it could be the other way  
19 around.

20 MS. HADDEN: It could be.

21 THE COURT: (indiscernible) opposing sides because  
22 you disagree. You disagree because you're on opposing  
23 sides.

24 MS. HADDEN: Yes. We disagree because we're on  
25 opposing sides. In my particular case, I of course believe

1       that my side is correct and that my client will in fact  
2       suffer an irreparable harm if this asset is sold to anyone,  
3       because under Section 363M, once it's sold, there's no way  
4       of in any way, shape, or form appealing that process or  
5       retrieving the property.

6                  As to -- and actually, I just want to very briefly  
7       address the sheriff's sale. I realize that both --

8                  THE COURT: Yeah, if you (indiscernible) on that,  
9       because what makes -- what also makes that argument  
10      difficult is this property has been facing a foreclosure  
11      sheriff's sale for let's call it quite some time, but the  
12      judgment that's before the Court in favor of the condominium  
13      board is from September 2019, so 2 River Terrace has been in  
14      the process of losing this property for a year and a half  
15      and has essentially done nothing to protect it.

16                 MS. HADDEN: So -- and that's where I want to  
17       somewhat disagree. We haven't done -- for lack of a better  
18       way of phrasing it, we haven't done as much in the  
19       bankruptcy in order to protect it because it was only in  
20       2020 that the apartment became from the LLC's issue -- from  
21       the LLC's perspective at issue in the bankruptcy. That was  
22       when the adversary proceeding was commenced and that was  
23       when we began defending that proceeding.

24                 As to the state court judgment and the sheriff's  
25       sale, each time that a sheriff's sale has been scheduled,

1 we've reached out to try to oppose that, attempt to deal  
2 with that, have it stayed, have it put off, have it  
3 canceled, and there are a number of different routes that  
4 that took place. I wasn't involved in it as much as my  
5 partner was, Mr. Parlatore, primarily because one of the  
6 issues was the fact that at that point the Department of  
7 Justice still had the apartment as a defendant in the  
8 (indiscernible) proceeding and also listed as a potential  
9 asset in the forfeiture allegation in the criminal case.

10 So, we had multiple different sharks circling, so  
11 to speak, and basically we're heading off each one as it  
12 came. We had also filed a state court proceeding.  
13 Essentially Mr. -- and I don't want to get, you know, too  
14 far into that whole argument with Mr. -- with Mr.  
15 Pittinsky's client and that sort of side issue, but  
16 essentially my client's claim has been that once Your Honor  
17 issued the order back in I believe it was June of 2018 -- I  
18 may very well have that date wrong, but once Your Honor  
19 issued the order that was essentially attempting to freeze  
20 in place a number of assets owned by Parmar Entities  
21 including this particular apartment, the building barred Mr.  
22 Parmar from access to the apartment.

23 And that -- I realize -- to be clear, I can see  
24 Mr. Pittinsky breathing deeply and sitting back in his  
25 chair, and Mr. Pittinsky, I understand that your client says

1       that that's not the case. I'm not in any way, shape, or  
2       form arguing the facts of that particular side issue at the  
3       moment. I'm simply trying to, you know, bring it to Your  
4       Honor's attention that when the Court says that we've done  
5       nothing, one of the reasons that that judgment has built up  
6       to where it has is because it was Mr. Parmar's position that  
7       he was being deprived of the use and enjoyment of his  
8       property.

9                   And for that reason, he filed a judge -- a  
10          proceeding in state court after I had become involved. I  
11          had at the time spoken with Mr. Pittinsky and we agreed to  
12          essentially hold it in abeyance, put off him needing to do  
13          an answer or needing to do any legal work on it,  
14          essentially, because right around that same time the  
15          adversary proceeding was taking place and Your Honor had  
16          become involved, Mr. Nolan was involved, and there were  
17          essentially two separate proceedings going on at the same  
18          time.

19                   So, Mr. Pittinsky and I had agreed to hold that in  
20          abeyance while we dealt with this, because if, for example,  
21          what happened happened and Your Honor transferred the  
22          apartment to Mr. Ehrenberg, it would have been a tremendous  
23          waste of time and money for both myself and Mr. Pittinsky  
24          (indiscernible).

25                   THE COURT: (indiscernible) is a facially judgment

1 of a New York state court determining as of September 6,  
2 2019 (indiscernible) some \$200,000 owed to the condominium  
3 (indiscernible).

4 MS. HADDEN: Yes.

5 THE COURT: So, whatever was in the who shot John  
6 arena in 2018 and most of 2019 is kind of irrelevant from  
7 this Court's vantagepoint because there's a facially valid  
8 judgment. No -- there's -- no court has set it aside.  
9 There had been voluntary suspension of collection efforts.  
10 So, while y'all may disagree about who shot John, nothing  
11 was done in terms of paying the common charges that arose  
12 prior to entry of that judgment, because they weren't paid.  
13 They haven't been paid since. The judgment hasn't been paid  
14 since. And it sounds that the essence of your argument is  
15 that once -- I'll use Mr. Parmar only because you're using  
16 Mr. Parmar -- once Mr. Parmar realized that his property  
17 might not be swept up in ancillary litigation involving the  
18 U.S. Department of Justice, then he got real interested in  
19 it and got very engaged in the fight here in the adversary  
20 proceeding on the fraudulent transfer.

21 That's not a very compelling argument for  
22 irreparable injury.

23 MS. HADDEN: The only -- where I would take issue  
24 with Your Honor's description of that is that he only became  
25 interested in it --

1                   THE COURT: He only became real interested.

2                   MS. HADDEN: All right. So -- and that's where I  
3                  disagree. It's not that he wasn't real interested in it  
4                  before. It was that he was protesting on multiple fronts,  
5                  and as he was dealing with each front, we were all under the  
6                  impression, accurate or inaccurate, that the apartment was  
7                  essentially frozen in place by the fact that the Department  
8                  of Justice was attacking it from two sides. There was a  
9                  bankruptcy court ruling that also attached it. Essentially  
10                 it was -- it had the state court judgment. It had things  
11                 going at it from all different directions and it seemed to  
12                 be frozen in place.

13                 So, it wasn't that he wasn't real interested in it  
14                 or that the LLC wasn't real interested in it or that the LLC  
15                 had abandoned it. It was simply that it appeared -- and I'm  
16                 trying to think of the best way to describe this, but as if  
17                 everyone -- if I have multiple different people standing  
18                 around this pen and they're all pulling on it from opposite  
19                 directions, the pen isn't really going to go every --  
20                 anywhere, because everybody's exerting equal force on it.

21                 That's essentially the way that the LLC was  
22                 viewing this particular apartment, was that it was frozen in  
23                 place by the number of different parties attempting to get  
24                 it, and each of those different parties we were interacting  
25                 with and opposing, but it did appear that it was almost

Page 80

1 stayed for lack of a better term by virtue of the number of  
2 different parties trying to get a piece.

3 So, I would take issue with the Court's  
4 perspective that he only became interested later on. It's -  
5 - it may very well appear that way from your vantagepoint,  
6 and I fully understand that. I'm just trying to give some  
7 backstory. Whether it's a backstory that you find  
8 satisfying or not, it is a backstory that's there, so.

9 THE COURT: Fair enough. And (indiscernible) on  
10 the stay? Anything further on the stay motion?

11 MR. PITTMINSKY: Would you permit myself, quickly,  
12 as an interested party just to opine on the stay motion?  
13 The condominium had an interest with respect to who owns the  
14 unit and settling that issue, and I can be very brief.

15 From the board's perspective, they want a unit  
16 owner that is known, clear, and is going to comply with the  
17 obligations a unit owner has under the bylaws. The status  
18 of this unit now, although in Mr. Ehrenberg's ownership as a  
19 liquidating Trustee, is still to a certain extent inchoate  
20 and that is detrimental and prejudicial --

21 THE COURT: I'm sorry. Did you say inchoate?

22 MR. PITTMINSKY: Yes, incomplete, uncertain, and as  
23 a result, that gives concern to the board. Who's permitted  
24 to enter? Who's not permitted to enter? Who's responsible  
25 for obligations?

1                   And I understand Mr. Ehrenberg is under an  
2 ownership by virtue of the order, but you've got claims by  
3 Ms. Hadden's client as well. We want just settlement and  
4 resolution of ownership once and for all, and for that  
5 reason we are against a stay, prefer that the unit get sold  
6 into an owner that's going to treat it as their home, not  
7 Airbnb it as Ms. Hadden's clients were doing when they owned  
8 it, actually will live in the unit and take care of it in a  
9 proper course.

10                  As far as Ms. Hadden's statement that somehow they  
11 did anything with respect to this unit and during the  
12 supreme court, that is just not true. Her partner in charge  
13 was notified of the state court action. They did not  
14 appear. They did not oppose it. And in fact, only after  
15 this bankruptcy did they bring this action claiming they  
16 were denied access by Mr. Parmar. They sought a stay of the  
17 sheriff's sale, which the Court rejected for improper  
18 filing, and the stay has never been sought.

19                  There's been no action by her client with respect  
20 to preserving this asset. And I don't want to get into the  
21 facts, but just for the record, Ms. Hadden's statement that  
22 anyone was ever denied access is just factually false. And  
23 on that note, I think I have said more than enough, Judge.

24                  THE COURT: All right. Thank you. All right.

25                  And here's what I'm going to do. I'm going to have you all

Page 82

1 stay in the hearing. I've got this -- I've got the issues.  
2 I'm going to try to give you all the ruling here in about  
3 the next 15 or 20 minutes. So, please stay in the Zoom  
4 hearing. I'm going to exit temporarily, but I'll be back in  
5 about 15 minutes, and if I have a ruling for you I will tell  
6 you that I do and what it is. If I can't rule on it today,  
7 then I'll let you know that as well.

8 All right? So, please stay in the Zoom hearing.  
9 Please feel free to turn your microphones and cameras off,  
10 and then we'll notify you when I'm back. Thank you.

11 MR. NOLAN: Thank you, Your Honor.

12 MS. HADDEN: Thank you, Your Honor.

13 MR. PITTIINSKY: Thank you, Judge.

14 (Recess)

15 THE COURT: All right. This is Judge Trust. I'm  
16 going to ask that the parties will now return into the  
17 hearing or at least turn your cameras back on. Please leave  
18 your microphones muted. Can you all hear me okay? Thumbs  
19 up?

20 All right. I am prepared -- the Court is prepared  
21 to rule on the two pending motions. One is the main case  
22 motion to sell the 2 River Terrace, Apartment 12J. The  
23 other is the motion for a stay pending appeal.

24 I'll first take the sale motion filed in the main  
25 case. The Court credits the testimony of Mr. Stanton and

1 Mr. Ehrenberg in support of the sale of that apartment, that  
2 12J unit, for \$4.8 million all cash with 10 percent of that  
3 amount being \$480,000 being deposited to secure the sale.

4 The Court notes based upon the testimony that this  
5 is the highest and best offer for the property during the  
6 marketing period by the liquidating Trustee. There has been  
7 no higher or better offer either during the marketing period  
8 or since the Trustee accepted his contract and continued to  
9 market the property. No one has come forward with a higher  
10 or better offer. There's no evidence in the record from the  
11 objecting party to River Terrace that there is a higher or  
12 better offer available. There was no evidence in the record  
13 that the process by which the unit was offered for sale or  
14 generated this contract was anything other than an open,  
15 fair, and arm's-length process which resulted in this  
16 contract of sale being proposed and being accepted.

17 The condo unit has been properly marketed. It was  
18 an adequate and fair process and it's a proper exercise by  
19 the liquidating trust (indiscernible) to accept this  
20 contract and consistent with his obligations under the  
21 confirmed plan of reorganization to ask that the Court  
22 approve it, and the Court does approve it. The motion is  
23 therefore granted.

24 With respect to the request for stay pending  
25 appeal, that motion is denied for the following reasons. As

1 the parties are aware and have briefed, there are four  
2 primary criteria that the Court is to consider in granting  
3 or denying the motion for a stay pending appeal. And as the  
4 parties are aware by virtue of my ruling made earlier today,  
5 the judgment vesting title to 2 River Terrace, the  
6 liquidating Trustee, is now a final judgment, so the Court  
7 is treating this as a request for a stay pending appeal of a  
8 final judgment in accordance with the bankruptcy rules.

9 The criteria, and I'll go through them one at a  
10 time rather than state all four at the top, the first being  
11 that the movant, here 2 River Terrace, now the former owner  
12 of the unit, have demonstrated it will suffer irreparable  
13 injury absent a stay. The Court notes that this element was  
14 not satisfied.

15 First, there's no evidence in the record from the  
16 movant, 2 River Terrance. There's just no evidence in the  
17 record at all as to how, why it might suffer any injury,  
18 much less irreparable injury. There's no supporting  
19 affidavit from Mr. Parmar or anyone else on behalf of 2  
20 River Terrace. So, while the Court has before it arguments  
21 of counsel, while eloquent, they're not supported by any  
22 evidence from the movant on the motion for a stay.

23 With respect, though, further to the irreparable  
24 injury element, the record before the Court is that no one  
25 has been living in this unit for what I'll define as quite

1 some time, whether it's two years or three years. It is  
2 quite some time in the life of this unit.

3 While the movant defendant has argued that, well,  
4 there was some period of time during which we were not  
5 allowed into the unit, and that is controverted by the condo  
6 board, there was no evidence before the Court that in fact  
7 access to the unit was denied.

8 What's clear on the record is that for a  
9 substantial period of time, three years or longer, the prior  
10 owner of the unit failed to pay what are in relative terms  
11 modest carrying costs for the unit, maintenance, taxes, and  
12 electricity charges that resulted in a substantial judgment  
13 being entered in favor of the condo board in September of  
14 2019.

15 Those monthly charges were not paid before  
16 September of 2019 and were not paid after 2019. And so, to  
17 argue that the movant has a -- will suffer substantial  
18 injury if the property is allowed to be sold by the bankrupt  
19 -- by the liquidating Trustee somewhat misses the mark,  
20 because this property has been in jeopardy of being sold by  
21 the condominium board under a valid on-its-face state court  
22 judgment for well over a year and a half, and the reason  
23 that the prior owner was in that jeopardy was because it  
24 failed to pay what were relatively modest -- in relation to  
25 the value of the unit relatively modest monthly carrying

1 charges.

2                   The argument essentially that, well, Judge, we  
3 didn't pay those because we weren't sure who we might lose  
4 the unit to, we might have lost it to a sheriff's sale for  
5 the condo board, we might have lost it to the Department of  
6 Justice incident, or ancillary to a criminal prosecution or  
7 investigation, and we might have lost it to the bankruptcy  
8 estate because there's been a -- in effect a seizure  
9 (indiscernible) the property in effect now for over two  
10 years, that really is contrary to demonstrating irreparable  
11 injury through the loss of the property were a stay not --  
12 were not granted, now the property is allowed to be sold.

13                  With respect to the second element, whether or not  
14 the liquidating Trustee, the plaintiff in the adversary  
15 proceeding, would suffer substantial injury if a stay were  
16 to be issued, the liquidating Trustee is also facing the  
17 potential sheriff's sale of this unit by the condominium  
18 board. That judgment remains outstanding and unpaid and  
19 there's no stay in effect of that judgment being executed  
20 other than voluntary agreements not to proceed that it  
21 agreed to from time to time between the condo board and the  
22 liquidating Trustee.

23                  The liquidating Trustee has been incurring and  
24 paying now on a current basis since March of this year  
25 approximately \$7,500 per month of carrying charges on the

1 condominium board. Every month that those payments are  
2 made, it prejudices the creditors of the bankruptcy estate  
3 because that is money that the creditors can then not  
4 recover and enjoy in accordance with the confirmed plan of  
5 reorganization.

6           Were the property not allowed to be sold now by a  
7 stay being granted, the liquidating Trustee would continue  
8 to incur and need to pay those monthly charges, again as  
9 well as facing the potential loss to a sheriff's sale under  
10 the state court judgment.

11           With respect to the demonstration of a substantial  
12 possibility of success on appeal, the Court agrees with the  
13 liquidating Trustee that that is the most significant  
14 factor. I will not go back into the extensive ruling that  
15 the Court made in granting the summary judgment. That  
16 stands on the record of this adversary proceeding.

17           There's been no demonstration, though, to this  
18 Court's satisfaction that clear error was made or  
19 substantial error was made by this Court in either its  
20 factual determinations as far as those facts as to which no  
21 material issue of fact existed or as to its application of  
22 the prevailing law to the undisputed material facts.

23           Finally, with respect to the public interest, that  
24 does not favor granting a stay pending appeal. As the  
25 parties are aware and as the Court's bench ruling on

1 granting the -- what was previously the partial summary  
2 judgment would evidence, the very existence of 2 River  
3 Terrance and its obtaining title to this property was the  
4 result of a substantial fraudulent transfer made by one or  
5 more of the Debtors.

6 That 2 River Terrance didn't pay for this  
7 property, never did, hasn't been by it, didn't put the money  
8 down for it, and now for some three years or so hasn't even  
9 been paying the monthly carrying charges, those type of  
10 facts do not weigh in favor of granting a stay because of  
11 the nature of the public interests involved. That's without  
12 considering the impact that the stay on that element might  
13 have on the creditors of the estate, again who will not be  
14 paid from the proceeds of this sale if the sale were not  
15 allowed to go forward.

16 While the motion for stay is being denied, the  
17 Court thought it would be helpful to also address were a  
18 stay to have been granted what bond conditions would be  
19 imposed by the Court in the event that this matter is taken  
20 the district court and should the district court have a  
21 different view on the Court's ruling, which is certainly  
22 fine and appropriate. The Court believes it would be  
23 helpful to inform the parties as to what the Court would  
24 consider to be an appropriate bond for a stay pending  
25 appeal. I discussed these in part during the colloquy with

1       the parties, but I'll memorialize it as part of the Court's  
2       ruling.

3                     The first condition in a stay pending appeal would  
4       be the payment -- immediate payment of the state court  
5       judgment which threatens the ownership of the property now  
6       in the liquidating Trustee's estate. That judgment, whether  
7       it's 470,000 or \$500,000, the precise amount can be readily  
8       calculated by the condominium board and notice of that  
9       amount provided to the parties at interest. But the first  
10      (indiscernible) stay pending appeal was that judgment has to  
11      be paid in full, period, full stop within 14 days.

12                   Part two of the stay pending appeal conditions  
13       would be that a \$5 million bond would need to be posted.  
14       The sale price is \$4.8 million. We all know that. That's  
15       clear from the record.

16                   Were a stay to be granted, it would be for a  
17       period of one year to allow the appeal to move forward  
18       before the district court. The \$5 million figure is then  
19       the \$4.8 million sale price plus a five percent interest  
20       factor for the period of one year that the stay would remain  
21       in effect.

22                   The Court recognizes that that may approximate the  
23       amount that creditors are being delayed from receiving under  
24       the confirmed plan. It's also a factor of the amount of  
25       continuing charges that the liquidating Trustee would have

Page 90

1 to be paid of the approximate \$7,500 a month while the  
2 property was not being sold. So, then condition two would  
3 be a \$5 million bond posted that would have to be posted  
4 within 14 days fully in cash or fully (indiscernible).

5 The third aspect of any stay pending appeal is  
6 that that stay would remain in effect for a period of one  
7 year and at the end of the one year period. The Court would  
8 revisit the bond amount were the appeal not determined that  
9 one year period to determine whether or not those two bond  
10 conditions remained adequate to protect the estate's  
11 interest.

12 Theoretically, condition one wouldn't moot it out,  
13 because the state court judgment would have been fully paid  
14 and the Court would then need to determine whether or not  
15 the \$5 million bond remains adequate.

16 But again, those are the conditions under which  
17 the Court would have imposed a bond were it to have granted  
18 the motion for a stay pending appeal, but again, the motion  
19 for the reasons set out on the record have been denied.

20 I'm going to direct that the liquidating Trustee  
21 submit both an order approving the sale motion in the main  
22 case as well as a final judgment in the adversary proceeding  
23 consistent with my ruling earlier today and a proposed form  
24 of order denying the stay pending appeal.

25 All right. Any other issues for housekeeping

Page 91

1 purposes that the parties wish to address? And let me  
2 advise Ms. Hadden, it may be a couple -- few days before an  
3 order is entered on the denial of the stay pending appeal  
4 and the procedural order severing out the other claims in  
5 the adversary proceeding.

6 I am noting on the record that the Court has now  
7 fully ruled on both the finality of the judgment vesting  
8 title in the bankruptcy Trustee, the plan Trustee, and the  
9 denial of the stay pending appeal. To the extent that your  
10 client wishes to seek district court review, you can  
11 certainly report to the district court, but the Court made  
12 the ruling on the record. The calendar is so ordered with  
13 the Court's ruling today so that your client is not  
14 inhibited by the delay of a couple or few days in seeking  
15 district court review of this Court's order should 2 River  
16 Terrance wish to (indiscernible). I did want that to be  
17 part of the record as well.

18 MS. HADDEN: Thank you, Your Honor. That was  
19 actually the one housekeeping question that I was going to  
20 raise, was whether or not the Court would require us to wait  
21 until the written decision was issued. So, thank you, I  
22 appreciate that.

23 THE COURT: I do not (indiscernible) a report to  
24 the district court that the ruling was rendered fully on the  
25 record this afternoon.

1 MS. HADDEN: Thank you.

2 MR. SCHARF: Your Honor, Ilan Scharf for the  
3 liquidating Trustee. Just in terms of housekeeping and  
4 understanding the kind of order we're going to submit, we  
5 respect the decision that renders this part of the complaint  
6 a final judgment. I believe Your Honor had said we're going  
7 to get a separate adversary proceeding number for the -- is  
8 that going to be for the new claims? Or sorry, for the  
9 claims that are severed out or the claim that's being  
10 finalized?

11 THE COURT: The judgment that has now been  
12 rendered final will remain under the original adversary  
13 number. That's just easier for a number of administrative  
14 and (indiscernible) issues. The unresolved claim would be  
15 severed into a new adversary proceeding. So, the judgment  
16 that you all need to submit is simply a final judgment on  
17 the relief that was already granted in favor of the  
18 liquidating Trustee.

19 The Court will enter its own procedural order  
20 severing the remaining (indiscernible).

21 MR. SCHARF: Okay. Will the Court's procedural  
22 order dictate, you know, that the pleadings don't need to be  
23 refiled or just to the extent, you know, answers don't need  
24 to be refiled, things like that?

25 THE COURT: It's fine. I mean, if you all want to

Page 93

1 submit a proposed form of severance order, that's certainly  
2 fine, but the contemplation of the Court is that everything  
3 as it existed at 2:00 this afternoon in that adversary  
4 proceeding that had not yet been resolved is moving over  
5 into a new adversary proceeding by number only but nothing  
6 else is changed.

7 MR. SCHARF: Thank you, Your Honor.

8 THE COURT: And then on the order denying the  
9 motion for stay pending appeal, that can be a plain, vanilla  
10 order for the reasons stated on the record. The motion is  
11 denied. You may include, if you wish, that had a stay been  
12 granted, what the bond terms would have been, mainly for  
13 ease of the district court should that become an issue if  
14 the district court would want to be informed of the order as  
15 opposed to the ruling itself.

16 All right? Anything further?

17 MR. NOLAN: Thank you, Your Honor. I'm just slow  
18 on the draw with the mute button.

19 MR. PITTIINSKY: Thank you, Judge.

20 MR. SCHARF: Thank you, Your Honor.

21 THE COURT: All right. Thank you all. That will  
22 then conclude --

23 MS. HADDEN: Thank you.

24 THE COURT: -- this afternoon's proceedings in 20-  
25 8051 and 18-71748. The Court will be in recess. We're off

Page 94

1 the record.

2 MR. PITTIINSKY: Your Honor, before you go off the  
3 record, I just want to note that I didn't note my appearance  
4 at the beginning of the calendar call, but I assume at this  
5 point my appearance is noted for whatever necessary on  
6 behalf of the condo.

7 THE COURT: (indiscernible) just state fully the  
8 name of your client. That's the only thing that we don't  
9 have on the record.

10 MR. PITTIINSKY: So, it's the Board of Managers of  
11 the Riverhouse One Condominium by Rosenberg & Pittinsky, its  
12 counsel.

13 THE COURT: Very well. All right. Thank you all.  
14 The Court will be in recess.

15 (Whereupon these proceedings were concluded)

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Page 95

1 | INDEX

2

## RULINGS

4

**Page**      **Line**

5

**6 Motion to Sell Property Granted**

83 23

7

**8 Motion for Stay Denied**

83 25

9

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80

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Page 96

1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing  
4 transcript is a true and accurate record of the proceedings.

5 **Sonya**  
6 **Ledanski Hyde**

Digitally signed by Sonya Ledanski  
Hyde  
DN: cn=Sonya Ledanski Hyde, o, ou,  
email=digital@veritext.com, c=US  
Date: 2021.06.23 17:13:38 -04'00'

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8 Sonya Ledanski Hyde

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22 Suite 300

23 Mineola, NY 11501

24

25 Date: June 23, 2021

[&amp; - 9th]

Page 1

<b>&amp;</b>	<b>2</b>	<b>2nd</b>	<b>28:16,17</b>	<b>5.6</b>	<b>74:5</b>	
<b>&amp; 5:3,18 7:16 54:24 56:20 94:11</b>	<b>2 3:4,16 4:6 5:12 7:20,24 9:20 10:8 10:12,24 11:3,5,7 11:9,19 14:25 16:1 17:24 22:15 22:19 25:2 46:7 53:25 54:13 55:1 55:3 58:8,12 61:16 63:25 67:18 75:13 82:22 84:5 84:11,16,19 88:2 88:6 91:15 <b>20 38:16 63:2 82:3</b> <b>20-08051 1:4 7:10</b> <b>10-08051 35:21</b> <b>200,000 55:22</b> <b>2007 27:24 62:19</b> <b>2010 70:11,11</b> <b>2016 22:23 23:1 23:24</b> <b>2018 76:17 78:6</b> <b>2019 75:13 78:2,6 85:14,16,16</b> <b>2020 41:12 75:20</b> <b>2021 2:5 26:21 32:21 42:25 43:12</b> <b>2022 5:22</b> <b>23rd 16:12 28:18</b> <b>24 26:17</b> <b>25 95:8</b> <b>28 53:14</b> <b>290 2:2</b> <b>2:00 93:3</b></b>	<b>3</b>		<b>500,000 69:18,23 89:7</b> <b>548 3:18</b> <b>55 38:7</b> <b>30 30:17 60:17</b> <b>300 96:22</b> <b>330 96:21</b> <b>3458 70:11</b> <b>34th 5:5</b> <b>35 61:7</b> <b>363 3:3</b> <b>363m 75:3</b> <b>375 24:11</b> <b>3rd 16:12 28:16 28:17</b> <b>4</b>	<b>6</b> <b>6 26:5 35:21 36:3 37:11,24,25 78:1</b> <b>6.250 24:11</b> <b>64 4:7 53:20 56:8</b> <b>69 56:9</b> <b>7</b> <b>7 38:15,17,18</b> <b>7,500 86:25 90:1</b> <b>70 15:9 18:15</b> <b>780 5:5</b> <b>8</b> <b>8-18-71748 3:1</b> <b>8-20-08051 3:11</b> <b>80 31:8 57:10</b> <b>8051 38:17 93:25</b> <b>83 3:21 4:7 95:6,8</b> <b>84 4:5</b> <b>8500 5:13</b> <b>86 4:1</b> <b>9</b> <b>9 55:13 69:20</b> <b>90 10:11,16,20 11:1,25 15:9</b> <b>460,000 39:6</b> <b>463,000 55:17</b> <b>470 66:11 69:19</b> <b>470,000 39:7 64:1 65:15,25 89:7</b> <b>480,000 83:3</b> <b>5</b> <b>5 26:5 34:2,17,22 35:6,11,15 61:2</b> <b>64:2,8 68:5 89:13 89:18 90:3,15</b> <b>5.25 23:21,23 44:20</b>	<b>500,000 69:18,23 89:7</b> <b>548 3:18</b> <b>55 38:7</b> <b>30 30:17 60:17</b> <b>300 96:22</b> <b>330 96:21</b> <b>3458 70:11</b> <b>34th 5:5</b> <b>35 61:7</b> <b>363 3:3</b> <b>363m 75:3</b> <b>375 24:11</b> <b>3rd 16:12 28:16 28:17</b> <b>4</b> <b>6</b> <b>6 26:5 35:21 36:3 37:11,24,25 78:1</b> <b>6.250 24:11</b> <b>64 4:7 53:20 56:8</b> <b>69 56:9</b> <b>7</b> <b>7 38:15,17,18</b> <b>7,500 86:25 90:1</b> <b>70 15:9 18:15</b> <b>780 5:5</b> <b>8</b> <b>8-18-71748 3:1</b> <b>8-20-08051 3:11</b> <b>80 31:8 57:10</b> <b>8051 38:17 93:25</b> <b>83 3:21 4:7 95:6,8</b> <b>84 4:5</b> <b>8500 5:13</b> <b>86 4:1</b> <b>9</b> <b>9 55:13 69:20</b> <b>90 10:11,16,20 11:1,25 15:9</b> <b>460,000 39:6</b> <b>463,000 55:17</b> <b>470 66:11 69:19</b> <b>470,000 39:7 64:1 65:15,25 89:7</b> <b>480,000 83:3</b> <b>5</b> <b>5 26:5 34:2,17,22 35:6,11,15 61:2</b> <b>64:2,8 68:5 89:13 89:18 90:3,15</b> <b>5.25 23:21,23 44:20</b>

**[abandoned - apartment]**

Page 2

<b>a</b>	<b>add</b> 18:12 35:25 <b>addition</b> 37:21 43:20 55:23 57:14 57:21 <b>address</b> 8:24 10:7 53:12 54:19 55:10 56:15 68:6 69:9 69:14 70:16 74:11 75:7 88:17 91:1 <b>addressed</b> 71:23 <b>adequate</b> 51:5 83:18 90:10,15 <b>adjourned</b> 56:1 <b>adjudicated</b> 54:4 <b>adjudication</b> 73:24 <b>adjust</b> 45:20 <b>administration</b> 53:17 <b>administrative</b> 92:13 <b>admissible</b> 71:15 <b>admission</b> 11:7,8 <b>admitted</b> 10:4,5 11:19 12:16,17 21:16,23,24,25 36:4 37:24,25 38:17,18 <b>adv</b> 1:4 <b>advanced</b> 43:6 <b>adversary</b> 8:7 10:11,17,20 11:1 34:23 35:6,12,21 38:8,16 53:14,18 53:22,23 54:3,8 55:13 56:9,9 71:19 75:22 77:15 78:19 86:14 87:16 90:22 91:5 92:7 92:12,15 93:3,5 <b>advertise</b> 15:4,6 15:17 16:3,22	<b>advertised</b> 20:16 57:4 <b>advertisement</b> 9:19 20:23,25 <b>advertisements</b> 9:13 11:5,10 13:24 14:20 17:1 17:2,9,24 <b>advertising</b> 15:17 15:19 16:5,17 <b>advice</b> 57:23 <b>advise</b> 91:2 <b>affidavit</b> 8:21,23 8:25 9:3,4,15,18 12:2,23 13:5,15 13:15,16 14:3 34:7 84:19 <b>affirm</b> 13:11 <b>afoul</b> 64:16,16 <b>afternoon</b> 7:2,15 7:23 14:11 17:17 33:16 40:7 91:25 93:3 <b>afternoon's</b> 93:24 <b>age</b> 26:14,22 <b>agencies</b> 18:11 <b>agent</b> 14:13 15:3 16:22 22:14 24:20 28:20 31:13,16 56:21 <b>ago</b> 27:24 62:20 66:8 69:19 <b>agreed</b> 45:6 77:11 77:19 86:21 <b>agreements</b> 86:20 <b>agrees</b> 87:12 <b>ahead</b> 14:2 <b>aiming</b> 45:11 <b>airbnb</b> 81:7 <b>al</b> 1:16 3:11,15 7:11 <b>alan</b> 2:22 7:3	<b>allegation</b> 76:9 <b>alleged</b> 39:4 <b>allow</b> 20:13 23:13 29:10 89:17 <b>allowed</b> 85:5,18 86:12 87:6 88:15 <b>allowing</b> 74:7 <b>altogether</b> 8:7 35:16 <b>ambiguous</b> 23:10 <b>amount</b> 28:13,21 28:22,23 31:8 39:4 55:16,17,22 58:22 60:21 64:6 64:8,18 65:7,16 66:1 69:17 83:3 89:7,9,23,24 90:8 <b>amounts</b> 65:14,22 <b>ancillary</b> 78:17 86:6 <b>angels</b> 67:5 <b>answer</b> 27:17 29:14,21 52:17 77:13 <b>answered</b> 29:9 63:23 <b>answers</b> 92:23 <b>anticipating</b> 45:13 <b>anybody</b> 26:8 <b>anybody's</b> 59:18 <b>apart</b> 52:20 <b>apartment</b> 3:4,16 4:6 14:25 22:23 23:4,8 24:13,15 24:22 25:2,11,13 25:23 26:1,16,23 26:24 27:9,13,16 27:20,24 28:5 29:5,13,24 30:3 30:16,17,22 40:20 41:4,23,24 42:22 43:18 44:1 46:6,7
----------	--	---	--

47:5,10,22,23 48:2 49:1,2,6,9,16 50:6 54:1 55:1,2,4 55:11,20,24 56:13 59:6,9,11,15,17 61:20 62:11,18,21 63:9 64:19 67:1 67:12,12,19 68:22 75:20 76:7,21,22 77:22 79:6,22 82:22 83:1 <b>apartments</b> 24:19 29:3,16,18,19,19 62:15 <b>apologize</b> 9:13 19:22 20:3 30:1,8 44:19 46:13 47:3 47:9 48:18,20 <b>appeal</b> 4:5 8:6 53:6,11,20,25 54:5,14,20 56:15 58:8,9,10,11,13 58:17 59:15,20 61:16 62:3 63:15 65:2 67:16,23 68:6 69:9 70:2,14 71:4,8 72:10,18 72:18 73:7 74:7 82:23 83:25 84:3 84:7 87:12,24 88:25 89:3,10,12 89:17 90:5,8,18 90:24 91:3,9 93:9 <b>appealed</b> 46:8 56:14 <b>appealing</b> 75:4 <b>appear</b> 11:11 53:16 79:25 80:5 81:14 <b>appearance</b> 7:13 94:3,5 <b>appeared</b> 46:10 79:15	<b>appearing</b> 8:11 <b>appears</b> 10:8 28:1 <b>apples</b> 25:7 <b>application</b> 3:6 87:21 <b>appointed</b> 42:7 <b>appreciate</b> 33:10 46:17 91:22 <b>appropriate</b> 27:16 44:24,25 57:15,20 65:3 88:22,24 <b>approve</b> 64:22 83:22,22 <b>approves</b> 66:25 <b>approving</b> 3:7 90:21 <b>approximate</b> 55:22 89:22 90:1 <b>approximately</b> 55:17 66:3 86:25 <b>approximation</b> 39:4 <b>april</b> 16:12,12 28:16,16,17,17,18 32:20 36:9 51:14 <b>area</b> 15:11 23:18 24:5,7,16 27:22 28:21 32:14 <b>areas</b> 21:1 <b>arena</b> 78:6 <b>argue</b> 54:18 61:10 61:12 85:17 <b>argued</b> 69:11 85:3 <b>arguing</b> 56:4 77:2 <b>argument</b> 54:12 70:13 75:9 76:14 78:14,21 86:2 <b>arguments</b> 8:1 53:10 84:20 <b>arisen</b> 37:16 <b>arising</b> 53:19	<b>arm's</b> 83:15 <b>arose</b> 78:11 <b>arrive</b> 50:14 <b>arrived</b> 23:7 <b>articulate</b> 58:25 <b>aside</b> 34:7 78:8 <b>asked</b> 26:15 29:9 <b>asking</b> 20:24 54:14 <b>aspect</b> 69:10 74:15 90:5 <b>asserted</b> 55:15 <b>assessments</b> 37:7 <b>asset</b> 47:10 50:9 58:12 61:25 62:22 63:3,5 64:14 68:18,19 69:3 74:5,5 75:2 76:9 81:20 <b>assets</b> 40:23 41:2 41:22 42:14,15 45:16 47:8,12,15 48:12 56:18 59:23 64:10 76:20 <b>assigned</b> 54:7 <b>assignment</b> 60:12 <b>assistant</b> 18:25 <b>assistants</b> 19:5 <b>associated</b> 41:22 42:15,16 59:6 <b>association</b> 36:13 37:5 70:25 71:22 <b>assume</b> 12:13 22:15 27:13 94:4 <b>ast</b> 1:4 3:1,11 <b>attach</b> 59:22 <b>attached</b> 9:4,11 9:12,14,18,25 10:15 12:1 62:10 62:15,21 64:23 79:9 <b>attacking</b> 79:8	<b>attempt</b> 39:15 76:1 <b>attempted</b> 39:10 <b>attempting</b> 76:19 79:23 <b>attention</b> 77:4 <b>attorney</b> 33:20,22 <b>attorneys</b> 5:4,12 5:19 69:11 <b>attorneys'</b> 65:18 <b>attorney's</b> 42:20 <b>auction</b> 57:22 <b>auctions</b> 32:24 57:22 <b>authorities</b> 71:12 71:14 <b>authority</b> 71:13 72:1 <b>authorizing</b> 3:4,7 <b>automatically</b> 19:4 <b>availability</b> 44:9 <b>available</b> 20:15 65:1 83:12 <b>avenue</b> 3:5 5:5,22 24:11 <b>avoid</b> 59:19 <b>awaiting</b> 68:17 <b>awarding</b> 4:1 41:14 <b>aware</b> 26:15 38:21 39:10,18 42:11 43:21 44:7 44:11 46:5 48:9 64:10 68:12 84:1 84:4 87:25 <b>awareness</b> 44:15
			<b>b</b>
			<b>b</b> 2:21 <b>back</b> 14:8,15 22:23 44:3 46:15 47:2 54:14 61:12 69:19 73:9 76:17

76:24 82:4,10,17 87:14 <b>background</b> 73:17 <b>backstory</b> 80:7,7 80:8 <b>backup</b> 57:11 <b>ballpark</b> 66:11 <b>bank</b> 50:13,15 60:5,9,23 70:25 <b>bankrupt</b> 85:18 <b>bankruptcy</b> 1:1 2:1,23 13:1 41:14 41:21 42:8 57:22 63:22 70:11 72:6 75:19,21 79:9 81:15 84:8 86:7 87:2 91:8 <b>banks</b> 60:22 <b>bank's</b> 60:14 <b>barred</b> 76:21 <b>based</b> 32:16 49:6 50:25 51:21 52:14 52:15 55:7 56:21 57:7 64:10 70:6 74:1 83:4 <b>basically</b> 64:3 76:11 <b>basis</b> 86:24 <b>bathrooms</b> 25:17 <b>battery</b> 23:18 24:5,7,24 28:11 <b>bears</b> 12:24 <b>becoming</b> 22:16 <b>bedroom</b> 24:16 <b>bedrooms</b> 25:6 <b>began</b> 75:23 <b>beginning</b> 94:4 <b>behalf</b> 3:9 4:2,6 7:16 8:12 47:10 54:24 84:19 94:6 <b>belief</b> 13:12,18	<b>believe</b> 8:22 9:11 28:15,15 30:22 31:3,7,19 32:19 34:24 39:20 43:2 43:15 44:10,16 48:8 50:25 51:11 51:23 54:18 56:8 56:22 59:24 62:12 62:19 71:16 74:25 76:17 92:6 <b>believed</b> 45:5 <b>believes</b> 88:22 <b>bell</b> 25:4 <b>bells</b> 25:9,10 <b>belongs</b> 67:7 <b>bench</b> 87:25 <b>benchmark</b> 29:24 30:15 45:18 <b>benefit</b> 10:1 16:8 <b>best</b> 13:6,7,12,17 13:19 29:2 32:5 43:13 49:25 51:13 51:24 53:16 57:16 57:16 61:1 68:24 69:21 73:23 79:16 83:5 <b>better</b> 21:5 43:5 57:12 63:18,20 66:18 72:19 73:12 75:17 80:1 83:7 83:10,12 <b>beyond</b> 13:10 33:3,4 <b>bidding</b> 45:11,14 <b>bigger</b> 66:4 <b>bill</b> 51:1 <b>bills</b> 37:19,19 <b>binder</b> 16:1 <b>binding</b> 66:12 <b>bit</b> 45:3 <b>board</b> 3:8 5:19 15:8 41:17 55:15 55:21,23 58:22	75:13 80:23 85:6 85:13,21 86:5,18 86:21 87:1 89:8 94:10 <b>board's</b> 80:15 <b>body</b> 49:14 <b>bond</b> 59:22 64:2,6 64:8,18 65:6 68:5 73:6 88:18,24 89:13 90:3,8,9,15 90:17 93:12 <b>bowyer</b> 3:17,17 <b>brand</b> 25:17,23 <b>breadbox</b> 66:4 <b>breathe</b> 61:17 <b>breathing</b> 76:24 <b>brief</b> 17:11 30:4 53:10 80:14 <b>briefed</b> 84:1 <b>briefly</b> 13:23 16:3 32:1 47:2 74:10 74:13 75:6 <b>bring</b> 25:18 27:9 77:3 81:15 <b>brings</b> 26:5 <b>broad</b> 23:10 <b>brochure</b> 9:10,24 11:4 56:24 <b>broker</b> 18:2 44:17 59:8,9 <b>brokerage</b> 15:14 15:23 <b>brokers</b> 15:7,8,11 15:17,24 <b>brooklyn</b> 14:13 <b>bucket</b> 70:14 <b>building</b> 15:12 23:19 28:9,9,11 31:14,17 32:14 44:8,15 62:11 76:21 <b>buildings</b> 63:2	<b>built</b> 27:24 62:19 77:5 <b>burden</b> 59:18 71:17 <b>business</b> 41:11 <b>button</b> 93:18 <b>buyer</b> 16:8 31:20 44:12,17 45:4,15 45:17 57:6 68:17 72:25 <b>buyers</b> 15:23 25:13,18 28:11,13 44:7 <b>buying</b> 16:8 <b>bye</b> 33:11 <b>bylaws</b> 65:19 80:17 <b>c</b> <b>c</b> 5:1 7:1 96:1,1 <b>cabinetry</b> 25:16 25:23 <b>calculated</b> 89:8 <b>calendar</b> 91:12 94:4 <b>california</b> 33:23 49:1 50:22 <b>call</b> 21:18 75:11 94:4 <b>called</b> 15:12 35:11 37:5 <b>calls</b> 23:10 41:8 51:16 <b>cameras</b> 82:9,17 <b>canceled</b> 76:3 <b>can't</b> 60:2 82:6 <b>capacity</b> 1:12 3:14 42:11 64:9,12 <b>capital</b> 58:5,5 <b>cards</b> 56:10 <b>care</b> 28:2 81:8 <b>carried</b> 71:17 <b>carrying</b> 71:1 85:11,25 86:25
--	--	--	--

**[carrying - confirmed]**

Page 5

88:9	<b>charge</b> 37:4 56:17	<b>client</b> 15:21 61:25	<b>compelling</b> 78:21
<b>case</b> 1:3,4 3:23 7:6	65:20 81:12	62:8 64:24 65:10	<b>complaint</b> 3:14
7:10 8:5 9:5 10:4	<b>charges</b> 36:14,20	66:12,22 69:7	92:5
10:11 13:2 22:2	36:20,25 55:16,18	75:1 76:15,25	<b>complete</b> 11:13
22:16 30:21 36:16	55:19 68:7,10,12	81:3,19 91:10,13	28:2
42:8,18,22 43:7	68:15,18 78:11	94:8	<b>completely</b> 24:24
46:24 47:6 50:21	85:12,15 86:1,25	<b>clients</b> 46:23	25:1,3 30:5
51:4,6 53:19	87:8 88:9 89:25	72:16 81:7	<b>completeness</b>
56:17 57:23 64:11	<b>chief</b> 7:3	<b>client's</b> 61:15 67:8	21:17,18,22
71:5 72:22 73:4	<b>chime</b> 69:17	76:16	<b>complicated</b>
73:22 74:25 76:9	<b>choice</b> 63:13	<b>clodagh</b> 3:16,17	71:11
77:1 82:21,25	<b>choose</b> 69:1	<b>close</b> 44:1 48:4	<b>comply</b> 80:16
90:22	<b>chose</b> 68:11,18	<b>closer</b> 69:18	<b>comps</b> 23:18
<b>cases</b> 57:23	69:2,5	<b>closes</b> 19:21 64:23	32:13 56:24
<b>cash</b> 31:11 32:19	<b>circling</b> 76:10	<b>closing</b> 3:8 64:25	<b>computation</b> 66:7
51:12,24 52:4	<b>circuit</b> 58:14	<b>collection</b> 78:9	<b>computed</b> 66:5
57:9 59:14 72:25	71:12,14	<b>colloquy</b> 88:25	<b>concept</b> 73:5
73:1 83:2 90:4	<b>circumstances</b>	<b>come</b> 12:1 26:2	<b>concern</b> 27:22
<b>caused</b> 70:22	57:20 70:3	44:15 48:4 59:11	66:23 80:23
<b>caveat</b> 66:16	<b>city</b> 23:19 24:5,6	63:19,19,20 72:13	<b>conclude</b> 93:22
<b>cavity</b> 73:11	24:22,25 49:11	73:1 83:9	<b>concluded</b> 94:15
<b>center</b> 5:13 8:16	65:21	<b>comes</b> 67:5	<b>Conclusion</b> 41:8
33:14	<b>claim</b> 43:3 76:16	<b>commenced</b> 75:22	<b>condition</b> 27:11
<b>central</b> 2:3	92:9,14	<b>commented</b> 62:14	27:14 89:3 90:2
<b>certain</b> 8:22 18:8	<b>claiming</b> 81:15	<b>commercial</b> 50:18	90:12
47:8 61:18 80:19	<b>claims</b> 3:6 53:22	<b>commission</b> 3:8	<b>conditions</b> 62:3
<b>certainly</b> 26:18	54:3,7,9 61:21	<b>common</b> 55:16	88:18 89:12 90:10
33:9 42:5 54:2	81:2 91:4 92:8,9	65:20 78:11	90:16
59:12 63:8 64:6	<b>clarify</b> 30:18	<b>commonplace</b>	<b>condo</b> 23:15 58:22
88:21 91:11 93:1	<b>clarity</b> 19:12	73:2	83:17 85:5,13
<b>certified</b> 96:3	34:21 42:25	<b>companies'</b> 15:14	86:5,21 94:6
<b>chair</b> 76:25	<b>clean</b> 11:1	<b>comparable</b> 24:23	<b>condominium</b>
<b>challenge</b> 14:5	<b>clear</b> 3:2,5 9:23	<b>comparative</b> 20:9	5:21 11:25 12:8
71:22	57:15 58:7 65:24	<b>comparing</b> 24:21	14:25 50:1,4
<b>chance</b> 18:19	70:8 71:13,14	29:12	55:15 65:16 69:18
32:10,13	76:23 80:16 85:8	<b>comparison</b> 57:10	75:12 78:2 80:13
<b>changed</b> 40:19,21	87:18 89:15	<b>compass</b> 8:18	85:21 86:17 87:1
41:15 93:6	<b>clearer</b> 66:15	9:10 18:7 19:3	89:8 94:11
<b>changes</b> 60:25	<b>clearly</b> 7:4 55:9	22:10 40:16 56:20	<b>conference</b> 3:12
<b>characteristics</b>	56:25 57:19 70:19	57:3	<b>confirm</b> 66:22
49:4,5 62:24 63:4	<b>clerk</b> 7:2,10 38:5	<b>compass.com</b>	<b>confirmed</b> 50:12
<b>characterize</b>	<b>click</b> 20:8,9	15:12 16:23	65:8 83:21 87:4
28:24,25 29:1			89:24

[confused - cut]

Page 6

<b>confused</b> 30:9	<b>contracts</b> 52:19	<b>court</b> 1:1 2:1 7:9	88:20,20,22,23
<b>connections</b> 16:14	<b>contrary</b> 86:10	7:12,20,24 8:2,14	89:4,18,22 90:7
<b>consequence</b> 57:19	<b>control</b> 42:20	8:19 9:2,6 10:1,7	90:13,14,17 91:6
<b>consider</b> 25:13 70:7 71:15 84:2 88:24	<b>controlled</b> 67:18	10:12,17,19,25	91:10,11,11,15,20
<b>consideration</b> 50:7	<b>controverted</b> 85:5	11:20 12:7,15,18	91:23,24 92:11,19
<b>considered</b> 50:3	<b>copies</b> 17:2	12:21,23 13:1,4,8	92:25 93:2,8,13
<b>considering</b> 45:15 88:12	<b>copy</b> 12:2,5,13 20:19	13:14,21 14:3,15	93:14,21,24,25
<b>consistent</b> 83:20 90:23	<b>corporation</b> 62:8 62:9,10	14:19 16:4,16	94:7,13,14
<b>consistently</b> 12:12	<b>corporations</b> 61:18	17:10,13,25 21:15	<b>courtroom</b> 7:3
<b>constitutes</b> 14:17 58:1	<b>correct</b> 10:18 12:2 12:5 13:5,12,17	22:4 23:11,13,13	<b>court's</b> 8:3 37:16
<b>consultation</b> 23:3	17:2 20:5 21:6	26:10 27:4 29:10	40:14 41:14 47:4
<b>contact</b> 12:10 44:18	22:11,12,23 23:2 23:5,22,24 24:9	31:25 33:4,7,12	52:14,16 53:13
<b>contacts</b> 15:10	24:10,12,13,14,17	33:19,22,24,25	55:12 58:25 59:3
<b>contained</b> 13:5,16 17:24 18:18 19:13 34:7	24:25 26:19 29:22 30:23,24 31:3,4	34:2 35:2,9,18	71:12 78:7 80:3
<b>contemplation</b> 93:2	31:12,15,21 33:20 35:8 40:14,15,20	36:2 37:13,21	87:18,25 88:21
<b>contingency</b> 31:5 31:6,7 43:24 57:11	41:18 42:9,23,24 47:17,20 48:15	38:1,12,14 40:3	89:1 91:13,15
<b>continue</b> 59:7 60:9 87:7	50:19 52:12 62:7 66:3 75:1	41:9,18,21 42:3	92:21
<b>continued</b> 83:8	<b>correctly</b> 27:19 30:2,13	46:6,8,11,16,22	<b>cover</b> 13:23
<b>continues</b> 60:5 66:9	<b>costs</b> 64:25 85:11	48:21 49:19 51:12	<b>covid</b> 57:18
<b>continuing</b> 22:4 68:15 89:25	<b>couldn't</b> 27:17 60:8	51:17 52:3,9,10	<b>created</b> 69:7 74:1
<b>contract</b> 11:17,25 12:3,7 16:10,11 16:12 19:14,16,21 28:17 43:23 44:4 52:5,5,11,18 83:8 83:14,16,20	<b>counsel</b> 7:17 46:10 49:3 60:4 84:21 94:12	52:13,24 53:4,9	<b>credibility</b> 37:23
	<b>country</b> 96:21 <b>county</b> 38:4,5	53:16,19,24 54:22	<b>creditors</b> 50:11
	<b>couple</b> 25:20 29:20 40:11 49:20 53:24 91:2,14	56:7 58:2,15,24	56:18 70:24 87:2
	<b>course</b> 17:22 19:14 54:10 66:23 67:13 69:22 74:13 74:25 81:9	59:25 60:10,18,23	87:3 88:13 89:23
		61:3,5,17 62:4,4	<b>credits</b> 82:25
		63:13,16,24 64:21	<b>criminal</b> 42:17
		64:25 65:3,14	43:7 47:18,21,23
		66:2,10,19,25	47:25 48:5,6
		67:4,14 68:2,25	64:11 76:9 86:6
		69:8,15,24 70:6	<b>criteria</b> 84:2,9
		70:10,17 71:5,10	<b>cross</b> 11:22 14:6
		71:13,14,21,25	22:5,5,8 40:5 58:2
		72:1,2,21 73:13	58:3,19 61:14
		74:8,18,21 75:8	<b>crossed</b> 69:8
		75:12,24 76:12	<b>crumbs</b> 56:4
		77:4,10,25 78:1,5	<b>cryptic</b> 69:12
		78:8 79:1,9,10	<b>current</b> 36:19
		80:9,21 81:12,13	55:19 68:4 86:24
		81:17,24 82:15,20	<b>currently</b> 9:16
		82:25 83:4,21,22	37:8 61:2
		84:2,6,13,20,24	<b>custom</b> 16:21
		85:6,21 87:10,12	<b>cut</b> 19:22 40:24
		87:15,19 88:17,19	

<b>d</b>	<b>defendant's</b> 63:19 <b>defending</b> 75:23 <b>defense</b> 73:21 <b>define</b> 84:25 <b>definitive</b> 29:21 <b>delay</b> 91:14 <b>delayed</b> 89:23 <b>delegated</b> 69:13 <b>demonstrated</b> 71:4 84:12 <b>demonstrating</b> 86:10 <b>demonstration</b> 87:11,17 <b>denial</b> 91:3,9 <b>denied</b> 67:23 81:16,22 83:25 85:7 88:16 90:19 93:11 95:8 <b>denying</b> 72:10 84:3 90:24 93:8 <b>department</b> 47:5 48:1 64:16 76:6 78:18 79:7 86:5 <b>depending</b> 20:12 50:14 <b>depends</b> 28:24 29:21 <b>deposited</b> 83:3 <b>deprived</b> 77:7 <b>deputy</b> 7:3 <b>derived</b> 23:20 <b>describe</b> 16:4 79:16 <b>described</b> 57:4,25 66:24 <b>description</b> 20:14 78:24 <b>despite</b> 62:21 <b>destra</b> 60:18 <b>detail</b> 74:12 <b>details</b> 21:1	<b>determination</b> 4:1 23:8 32:16 47:14 53:23 72:17 <b>determinations</b> 87:20 <b>determine</b> 90:9,14 <b>determined</b> 23:3 23:14 50:21 65:16 90:8 <b>determining</b> 67:14 78:1 <b>detrimental</b> 80:20 <b>dictate</b> 92:22 <b>didn't</b> 16:12 19:22 29:25 40:24 69:1 73:8 86:3 88:6,7 94:3 <b>difference</b> 19:14 19:19 20:18 30:20 <b>differences</b> 24:18 <b>different</b> 16:17 20:11 24:23,24 25:4 35:2 41:22 47:16 49:15 71:9 76:3,10 79:11,17 79:23,24 80:2 88:21 <b>difficult</b> 75:10 <b>dig</b> 66:9 <b>dire</b> 17:11,15 <b>direct</b> 13:22 14:9 14:17 22:2 34:13 43:17 90:20 <b>directed</b> 15:22 <b>directions</b> 79:11 79:19 <b>directly</b> 14:19 18:10 19:4 <b>disagree</b> 74:15,16 74:22,22,24 75:17 78:10 79:3 <b>discussed</b> 43:20 64:5,7 88:25	<b>discussion</b> 66:11 <b>display</b> 56:23 <b>dispute</b> 55:8,9 <b>disputed</b> 38:9 <b>distance</b> 66:2 <b>distribute</b> 56:18 60:6,8,20 <b>distributed</b> 50:11 60:16,17,22 <b>distribution</b> 72:6 <b>district</b> 1:2 46:8 46:10 58:14 62:4 65:3 67:4 68:1 88:20,20 89:18 91:10,11,15,24 93:13,14 <b>dkt</b> 3:23 <b>docket</b> 9:3,4 10:3 10:8,11,13,16,20 11:1,24 34:1,15 34:22,25 35:5,6 <b>docketed</b> 53:14,20 <b>document</b> 4:3,7 10:14 11:2 21:22 34:10 38:6,16 <b>documents</b> 9:8 36:10,15 <b>doesn't</b> 52:18 59:25 61:16 67:1 68:19 73:11 <b>doing</b> 14:24 47:14 58:21 59:21 61:8 81:7 <b>dollar</b> 39:4 <b>domestic</b> 15:9 18:15 <b>don't</b> 14:15 17:20 18:14 19:10 21:9 29:14,20 31:18,20 38:5 45:14,24 47:7 50:3 61:11
----------	---	---	---

**[don't - exhibits]**

Page 8

64:8 71:8,20 73:11 76:13 81:20 92:22,23 94:8 <b>door</b> 64:22,22 65:4,6,10,10 66:24 67:24,25 <b>douglas</b> 22:11,13 22:25 23:1 34:5 34:19 35:5 36:7 <b>draw</b> 93:18 <b>dream</b> 73:1 <b>driving</b> 26:23 <b>dropdown</b> 20:5 20:13,20 21:20 <b>due</b> 11:17 54:10 <b>duplicative</b> 35:14 <b>duties</b> 15:2 54:19 <b>duty</b> 56:19 <b>décor</b> 27:21	<b>ehrenberg</b> 1:12 3:9,11,14 4:3 6:4 7:10 8:10 33:13 33:16,17,19,21,23 34:4,13,15 36:7 38:2,21 40:5,7 42:7 47:2 48:25 49:21,23 52:3,14 52:16,24 59:24 60:4,15,25 61:3,4 62:17 77:22 81:1 83:1 <b>ehrenberg's</b> 34:1 34:24 35:3 80:18 <b>either</b> 9:23 12:1 28:17 30:11 42:15 50:15 52:4,13 53:5 62:15 63:14 67:22,25 71:17 83:7 87:19 <b>electricity</b> 85:12 <b>electronic</b> 15:18 <b>element</b> 70:16 71:3,17,18 72:8 73:14 84:13,24 86:13 88:12 <b>elements</b> 70:6,17 72:11 <b>elenia</b> 3:11,16 7:10 <b>elliman</b> 22:11,13 22:25 23:1 34:5 34:19 35:5 36:7 <b>elliott</b> 3:17 <b>eloquent</b> 84:21 <b>encumbered</b> 55:14 <b>encumbrances</b> 3:6 <b>engaged</b> 78:19 <b>enjoy</b> 87:4 <b>enjoyment</b> 77:7 <b>enormous</b> 61:23	<b>enter</b> 80:24,24 92:19 <b>entered</b> 10:6 52:5 52:6 54:6 56:7 85:13 91:3 <b>entire</b> 64:18 <b>entities</b> 16:17 41:22 42:16 76:20 <b>entitled</b> 54:2 <b>entity</b> 64:1 <b>entry</b> 3:3,6 78:12 <b>equal</b> 79:20 <b>error</b> 87:18,19 <b>especially</b> 61:8 <b>essence</b> 78:14 <b>essentially</b> 11:12 21:23 58:6 61:14 74:3 75:15 76:13 76:16,19 77:12,14 77:17 79:7,9,21 86:2 <b>establish</b> 34:9 <b>establishing</b> 3:21 <b>estate</b> 3:2,23 8:18 9:12 14:13 15:8 16:22 18:2 22:14 24:20 25:7 28:20 41:15 42:14 51:22 56:21,22 58:11,18 58:20 65:1,8 67:2 69:4,4 70:24 72:3 74:5,6 86:8 87:2 88:13 89:6 <b>estate's</b> 59:23 90:10 <b>estimation</b> 27:23 <b>et</b> 1:16 3:11,15 7:11 <b>event</b> 88:19 <b>eventually</b> 43:22 <b>everybody's</b> 79:20	<b>evidence</b> 8:8 9:1 10:6 11:18,19 12:6,17 17:9 19:7 21:25 26:3 37:12 37:25 38:18 53:5 63:16 70:10,18 71:16 83:10,12 84:15,16,22 85:6 88:2 <b>evidentiary</b> 8:4 9:20 <b>exactly</b> 44:18 45:8 63:2 <b>examination</b> 14:9 22:6,8 32:2 34:13 40:5 43:17 49:21 <b>example</b> 18:8 20:9 20:12 24:8 26:21 27:20 68:16 77:20 <b>exception</b> 70:4,9 <b>excused</b> 52:25 <b>executed</b> 13:16 86:19 <b>exercise</b> 83:18 <b>exerting</b> 79:20 <b>exhaustive</b> 74:12 <b>exhibit</b> 9:12,20,21 10:4,5,6,8,10,12 10:15,20 11:2,3,4 11:5,5,9,10,10,19 11:21,24 12:7,8,9 12:16,17 15:25 16:1 17:1,9,24,25 18:18 19:13 20:1 21:4,16,24,25 34:2,6,17,22,24 35:3,6,11,11,15 35:21 36:3 37:11 37:24,25 38:4,13 38:15,17,18 <b>exhibits</b> 8:22,23 8:25 9:15 10:2,21 10:24 11:7 12:18
<b>e</b>			
<b>e</b> 2:21,21 5:1,1 7:1 7:1 66:8 69:19 95:1 96:1 <b>e.d.n.y.</b> 70:11 <b>ear</b> 60:2 <b>earlier</b> 43:2 47:21 84:4 90:23 <b>ease</b> 10:9 14:23 93:13 <b>easier</b> 92:13 <b>eastern</b> 1:2 <b>easy</b> 35:16 46:20 <b>ecro</b> 2:25 <b>effect</b> 41:18 54:9 59:21 86:8,9,19 89:21 90:6 <b>effects</b> 28:14 59:21 <b>efficient</b> 46:4 53:17 72:5 <b>efficiently</b> 72:2 <b>efforts</b> 78:9			

**[exhibits - front]**

Page 9

34:16 35:12,23 37:23 38:1 <b>exist</b> 20:21 <b>existed</b> 87:21 93:3 <b>existence</b> 68:12 88:2 <b>exists</b> 39:8 69:21 <b>exit</b> 82:4 <b>expand</b> 20:14 21:1,7,8 <b>expanded</b> 11:13 20:21 21:4 <b>expedite</b> 72:2 <b>expeditious</b> 46:4 72:5 <b>expeditiously</b> 56:19 <b>expenses</b> 36:14 37:4,9 60:21 <b>experience</b> 24:4 28:20 29:6,7 30:14,15 50:25 72:16 <b>expert</b> 41:10 <b>expertise</b> 14:1,4 24:19 32:17 50:23 51:9 56:21,22 57:25 <b>explaining</b> 56:25 <b>extensive</b> 56:21 87:14 <b>extent</b> 41:8 59:10 59:20 62:8 80:19 91:9 92:23	<b>fact</b> 25:24,25 26:1 38:9 46:10 48:6 57:17 68:13 75:1 76:6 79:7 81:14 85:6 87:21 <b>factor</b> 68:15 71:6 72:3 87:14 89:20 89:24 <b>factors</b> 29:21 50:7 57:8 70:10 71:6 74:11,16 <b>facts</b> 77:2 81:21 87:20,22 88:10 <b>factual</b> 87:20 <b>factually</b> 81:22 <b>failed</b> 85:10,24 <b>fair</b> 32:4,20 39:16 50:10,23 51:13 54:22 80:9 83:15 83:18 <b>fall</b> 52:20 <b>fallen</b> 24:3,4 <b>falls</b> 72:4 <b>false</b> 81:22 <b>familiar</b> 12:23 22:15 44:8 <b>family</b> 67:20 <b>fancy</b> 60:1 <b>far</b> 50:17 60:17 76:14 81:10 87:20 <b>fast</b> 45:15 <b>favor</b> 75:12 85:13 87:24 88:10 92:17 <b>february</b> 26:21 40:16 41:12 43:11 55:13,14 73:9 <b>federal</b> 2:2 70:7,8 <b>fee</b> 37:4 <b>feel</b> 61:7 67:18 82:9 <b>fees</b> 39:2 55:16 59:5,6,6,7,8,9 65:18,18	<b>fence</b> 63:10 <b>fight</b> 63:6,6 73:5 78:19 <b>fighting</b> 68:1 <b>figure</b> 45:6 89:18 <b>filed</b> 3:9 4:2,5 10:13 12:24 76:12 77:9 82:24 <b>filings</b> 81:18 <b>final</b> 4:1 53:20 54:6 84:6,8 90:22 92:6,12,16 <b>finality</b> 8:6 91:7 <b>finalized</b> 92:10 <b>finally</b> 87:23 <b>financing</b> 31:5,6,7 31:8,9 43:24 57:11 <b>find</b> 19:10 37:21 45:15 51:5 67:21 80:7 <b>fine</b> 30:9 88:22 92:25 93:2 <b>firm</b> 7:17 <b>first</b> 7:13 8:9,10 8:13 16:6 44:2 50:15,19 53:12 54:12 58:21 68:2 82:24 84:10,15 89:3,9 <b>fit</b> 51:1 <b>five</b> 25:5 89:19 <b>fixed</b> 67:1 <b>fixtures</b> 62:24 <b>flesh</b> 61:20 <b>flip</b> 61:5,13 <b>floor</b> 5:5 <b>floors</b> 25:16 <b>flow</b> 50:16 <b>focus</b> 25:8 26:20 26:23 <b>focused</b> 15:21	<b>following</b> 46:21 47:17 83:25 <b>force</b> 79:20 <b>foreclose</b> 39:11 <b>foreclosure</b> 75:10 <b>foregoing</b> 96:3 <b>forfeiture</b> 76:9 <b>form</b> 23:9 27:1 33:13 35:5 46:1 48:17 51:15 64:3 75:4 77:2 90:23 93:1 <b>former</b> 84:11 <b>forms</b> 68:19 <b>forth</b> 15:22 21:2 44:3 70:1,4 72:1,9 <b>forward</b> 54:10 58:12 63:19,19,20 64:3 65:2,2 83:9 88:15 89:17 <b>found</b> 61:7 69:19 <b>foundation</b> 11:21 12:16 13:23 14:2 14:20 34:10 35:15 36:2 37:14 38:11 42:2 <b>four</b> 66:8 70:6,10 71:6 74:11,16 84:1,10 <b>fourth</b> 71:18 72:11 <b>frankly</b> 55:18 <b>fraudulent</b> 3:19 78:20 88:4 <b>fraudulently</b> 69:3 <b>free</b> 3:2,5 26:18 33:8 58:7 82:9 <b>freeze</b> 76:19 <b>freezing</b> 30:6 <b>front</b> 16:1 17:24 18:19 19:6 20:17 20:20 21:3 79:5
<b>f</b> <b>f</b> 2:21 3:3 58:5 96:1 <b>face</b> 85:21 <b>facially</b> 77:25 78:7 <b>facing</b> 75:10 86:16 87:9			

<b>fronts</b> 47:16 79:4	87:14 88:15 94:2	<b>gucci</b> 70:4	<b>harmed</b> 70:15
<b>frozen</b> 64:10 79:7 79:12,22	<b>goal</b> 32:4	<b>guess</b> 68:9 69:23	<b>hasn't</b> 63:8 78:13 88:7,8
<b>full</b> 56:23 60:9 64:8,19,24 65:9 65:23 89:11,11	<b>goes</b> 52:19 59:10 65:2,2 66:25 67:2 71:11 72:16	<b>guidelines</b> 64:17	<b>haven't</b> 30:11 49:7,16 66:5 75:17,18 78:13
<b>fully</b> 80:6 90:4,4 90:13 91:7,24 94:7	<b>going</b> 8:5 9:19 11:18 12:3 13:8 14:23 21:18 33:2 34:15 36:8 43:3,6 45:10 47:2 48:16	<b>gut</b> 25:1	<b>head</b> 46:14
<b>function</b> 71:12	53:9,10,11 54:18	<b>h</b>	<b>heading</b> 76:11
<b>functional</b> 21:18	55:9 58:4,5,23	<b>hadden</b> 4:6 5:16 7:22,22,25 9:6,9 9:22 11:6,8 12:9 12:11 14:5 17:10 17:11,14,16 19:25 20:4 21:13 22:5,7 22:9 23:17 26:14 26:19 27:5,6,7 29:11 31:23 33:2 34:21 35:10,23,24 38:12 40:3,4,6 41:16 42:4,5,6 46:2,17,25 48:18 48:23,24 49:17 51:15 52:15,22 53:8 61:6,13 62:7 64:5 65:12 66:21 68:9 72:13 74:9 74:10,20,24 75:16 78:4,23 79:2 82:12 91:2,18 92:1 93:23	<b>healthcorp</b> 1:8,13 3:1,15 7:7 33:18 49:24
<b>funds</b> 60:18,19 65:1	81:25,25 82:2,4 82:16 90:20 91:19 92:4,6,8	<b>hadden's</b> 69:7 81:3,7,10,21	<b>hear</b> 7:25 29:25 33:13 82:18
<b>further</b> 22:1 33:6 40:1 49:17 52:2 52:13 53:4,23 59:23 74:9 80:10 84:23 93:16	<b>good</b> 7:2,14,14,23 9:17 14:11 17:17 17:19 33:11,16 40:7,8,9	<b>half</b> 75:14 85:22	<b>heard</b> 26:12 44:23 55:7 56:16
<b>future</b> 53:23	<b>granted</b> 67:23 70:3 83:23 86:12 87:7 88:18 89:16 90:17 92:17 93:12 95:6	<b>hand</b> 13:9 59:24 66:2	<b>hearing</b> 3:1 9:20 10:5 33:8 36:22 52:9 82:1,4,8,17
<b>g</b>	<b>granting</b> 53:13 62:5 71:19 72:12 84:2 87:15,24 88:1,10	<b>handle</b> 54:20	<b>hearings</b> 7:4 8:4 53:1
<b>g</b> 7:1	<b>great</b> 35:18 44:10	<b>handles</b> 25:21	<b>held</b> 57:11 60:19
<b>game</b> 63:17	<b>greene</b> 3:17,17	<b>handling</b> 72:5	<b>help</b> 74:4
<b>gatekeeper</b> 71:12	<b>grenade</b> 66:2 69:23	<b>hanging</b> 73:15	<b>helpful</b> 61:9 88:17 88:23
<b>general</b> 45:18 46:23	<b>group</b> 5:11 7:22 9:11,25 35:25 37:23 50:13,15 60:9,24	<b>happened</b> 41:3 45:9 77:21,21	<b>here's</b> 20:7 81:25
<b>generally</b> 21:10 24:6 66:13	<b>group's</b> 51:9	<b>happens</b> 25:1 68:7	<b>he'd</b> 59:8,8
<b>generated</b> 83:14		<b>happy</b> 8:24 38:10	<b>he's</b> 26:15 59:20 59:25 62:14,15,21 63:4,6 70:22
<b>getting</b> 9:13 61:24		<b>hardware</b> 25:22	<b>hi</b> 17:18
<b>give</b> 9:2 10:19 13:11 20:7 23:11 29:21 39:3 58:9 80:6 82:2		<b>harm</b> 74:1,14 75:2	<b>higher</b> 22:14 24:9 45:3,12 57:12,18 63:18 83:7,9,11
<b>given</b> 56:2 57:23 57:23			<b>highest</b> 29:4 32:5 49:25 57:8 68:23 73:23 83:5
<b>gives</b> 80:23			<b>highly</b> 58:20
<b>giving</b> 68:22			<b>hoa</b> 37:4 39:1
<b>go</b> 8:10 11:22 14:2 14:15 16:12 22:5 25:6 45:3,7 48:13 50:15 58:12 61:12 66:17 69:5,22 74:12 79:19 84:9			<b>hoch</b> 8:18 9:10 51:8 56:20

**[home - involvement]**

Page 11

<b>home</b> 20:9 81:6 <b>homeowners</b> 36:13 37:8 <b>homeowner's</b> 70:25 71:22 <b>homestead</b> 61:21 <b>homework</b> 60:12 <b>hon</b> 2:22 <b>honor</b> 7:14,15,23 7:25 8:11,20 9:20 10:9,16,23 11:23 12:20,22 13:25,25 14:7,18,22 17:8 17:12 20:1 21:13 22:3,7 26:7,19 32:1 33:3,6,16 34:12,19 35:13,25 36:5 37:11 38:3 38:12,19 40:2,4 42:2 46:17,19 48:16 49:20 51:19 52:2,23 53:7,8 54:17,19,23,25 55:6 56:25 58:20 59:5,10,12,12 60:3 62:8 64:20 65:12 66:9,24 69:16 70:1,2 71:16,18,20 72:4 73:3,25 74:10 76:16,18 77:15,21 82:11,12 91:18 92:2,6 93:7,17,20 94:2 <b>honor's</b> 56:11 66:16 77:4 78:24 <b>hope</b> 45:4,10 <b>hopefully</b> 40:12 <b>hostage</b> 59:19 <b>house</b> 62:25 <b>housekeeping</b> 11:24 35:16 90:25 91:19 92:3	<b>howard</b> 1:12 3:9 3:14 4:3 6:4 33:17 34:13 40:5 49:21 <b>human</b> 61:20 <b>hyde</b> 4:25 96:3,8 <b>hypothetical</b> 27:2 59:3 <b>i</b> <b>idea</b> 45:17 63:5 <b>identification</b> 10:25 35:19 38:14 <b>identified</b> 34:18 <b>identify</b> 8:15 33:14 36:9 38:10 <b>ii</b> 3:6 <b>ilan</b> 5:9 7:15 54:23 92:2 <b>immediate</b> 89:4 <b>immediately</b> 44:5 60:20 <b>impact</b> 39:22 88:12 <b>imposed</b> 88:19 90:17 <b>impossible</b> 67:9 <b>impression</b> 49:8 79:6 <b>improper</b> 81:17 <b>inaccurate</b> 79:6 <b>inchoate</b> 80:19,21 <b>incident</b> 61:19 86:6 <b>include</b> 93:11 <b>including</b> 41:22 57:8 76:21 <b>incomplete</b> 27:2 80:22 <b>increase</b> 55:17 <b>incur</b> 59:5 87:8 <b>incurred</b> 59:7,8 <b>incurring</b> 55:18 59:5 86:23	<b>indefinitely</b> 45:16 <b>indiscernible</b> 15:15 22:24 23:15 25:25 37:16 41:11 41:20 45:25 48:21 53:5,6 61:20,24 62:12 63:9,17 64:24 65:9 67:25 69:2,6,6,10,11,14 74:16,21 75:8 76:8 77:24,25 78:2,3 80:9 83:19 86:9 89:10 90:4 91:16,23 92:14,20 94:7 <b>individual</b> 26:4 67:17 <b>industry</b> 15:11 28:10 29:23 30:14 32:17 <b>inform</b> 88:23 <b>information</b> 13:4 13:16 18:2,12,21 18:23 19:10,11 20:7 21:20,24 <b>informed</b> 93:14 <b>inherent</b> 61:21 <b>inhibited</b> 91:14 <b>initially</b> 20:7 44:20 47:12 <b>initiated</b> 71:25 <b>injury</b> 70:20 71:7 72:14 73:14,15 78:22 84:13,17,18 84:24 85:18 86:11 86:15 <b>inputted</b> 19:4 <b>inquiries</b> 16:20 21:10 <b>inside</b> 40:23 41:2 63:8 <b>inspect</b> 32:7,10	<b>instance</b> 18:9 <b>instructions</b> 46:21 56:11 <b>intellectual</b> 16:2 <b>intention</b> 8:3 66:10 <b>interacting</b> 79:24 <b>interactions</b> 35:20 <b>interest</b> 16:18 53:16 60:6,8 61:1 65:7 69:12 71:19 71:24 72:2,4,8 80:13 87:23 89:9 89:19 90:11 <b>interested</b> 16:8 63:12 78:18,25 79:1,3,13,14 80:4 <b>interests</b> 71:23 72:9 88:11 <b>internal</b> 45:7 <b>international</b> 15:10 18:15 <b>internet</b> 15:18 16:2 44:14 <b>intimate</b> 51:1 <b>invested</b> 62:5 63:6 63:14 <b>investigate</b> 64:17 <b>investigation</b> 86:7 <b>invoice</b> 34:4 35:4 <b>invoices</b> 34:20 35:7,20 36:8,13 36:21,21 37:15,23 <b>invoking</b> 26:10 <b>involved</b> 18:20 22:16,22 47:5,8 54:5 68:14 71:1 73:17 76:4 77:10 77:16,16 88:11 <b>involvement</b> 51:21
---	---	---	---

[involving - lacks]

Page 12

<b>involving</b>	78:17	70:3,4,6,9,21 71:6	<b>j</b>	<b>justice</b>	47:5 48:1
<b>irrelevant</b>	78:6	71:13 72:23,25	<b>j</b>	55:4	53:17 64:16 74:6
<b>irreparable</b>	71:7	73:1,3,5 75:3 79:3	<b>jeff</b>	5:8 8:11	76:7 78:18 79:8
	74:14 75:2 78:22	80:4,7 83:18 85:1	<b>jeffrey</b>	3:9 4:2	86:6
	84:12,18,23 86:10	89:7,24 92:25		7:17	<b>k</b>
<b>islip</b>	2:3	94:10	<b>jeopardy</b>	74:5	<b>k</b> 3:17
<b>isn't</b>	58:22 64:21	<b>i'd</b> 8:24,25 17:8		85:20,23	<b>keep</b> 11:1 23:15
	79:19	35:24 37:11 43:13	<b>jersey</b>	24:22	35:14,16 71:22
<b>issue</b>	37:22 39:21	45:24	<b>job</b>	19:2 30:18	<b>keeps</b> 30:6 58:11
	54:8,20 69:13	<b>i'll</b> 11:20,20 14:5		45:15	66:6
	71:8,9 72:13,15	17:20 23:12 27:1	<b>jobs</b>	74:17	<b>keys</b> 56:10
	73:6,12 75:20,21	29:8,10 30:1,12	<b>john</b>	78:5,10	<b>kids</b> 73:10
	76:15 77:2 78:23	33:5,24 34:10	<b>jones</b>	5:3 7:16	<b>kind</b> 29:23 54:18
	80:3,14 87:21	35:15 37:13 41:7		54:24	78:6 92:4
	93:13	42:1 45:25 46:19	<b>journal</b>	15:22	<b>kitchen</b> 24:16
<b>issued</b>	37:8 70:21	53:2 54:11,20	<b>joy</b>	30:11	25:15,15,20 27:21
	76:17,19 86:16	61:12 66:17 78:15	<b>judge</b>	2:23 7:3,8	27:21
	91:21	82:4,7,24 84:9,25		7:12 41:21 42:13	<b>knew</b> 15:11 43:2,3
<b>issues</b>	8:25 25:15	89:1		61:9,10,11 71:15	44:17
	25:17,20 53:19	<b>i'm</b> 7:2 8:5,18		77:9 81:23 82:13	<b>knocks</b> 28:10,12
	54:9 56:15 69:14	9:13 12:3 13:8,9		82:15 86:2 93:19	<b>know</b> 12:4,5
	71:11 76:6 82:1	14:13,23,24,24	<b>judgment</b>	4:2	15:18 16:2 17:5
	90:25 92:14	17:6 18:16 19:1		17:20 18:14 21:10	17:20 18:14 21:10
<b>item</b>	10:3 11:1	21:8,9 23:2 26:12		23:18 25:12 26:2	23:18 25:12 26:2
	34:2 35:20	27:19 30:6,21		29:14 31:18,20	29:14 31:18,20
<b>items</b>	21:3 26:22	33:2,16 34:15		55:21 56:7 59:2	38:5 39:3 45:14
<b>it'll</b>	50:15	36:8 38:10 40:24		61:23 62:5 64:1,6	45:24 47:7 61:9
<b>it's</b>	7:15 12:12	43:16,21 44:17		64:19,25 65:9,20	61:17 62:25 63:21
	14:19,20 16:10	48:16 49:13 50:12		67:5 68:3,3,13	63:21 64:8,13
	19:19,20 20:14	53:9,10,11 58:4,5		69:20 70:2 72:16	65:13 66:12 68:22
	21:5,7 23:10 25:5	58:14,24 60:11		75:12,24 77:5,25	73:10,12,19,22
	25:7,12,23,25	63:11 65:13 67:14		78:8,12,13 79:10	76:13 77:3 82:7
	26:21 27:2,22	67:21 77:1,3		84:5,6,8 85:12,22	89:14 92:22,23
	28:4 29:8 30:11	79:15 80:6,21		86:18,19 87:10,15	<b>knowledge</b> 13:6,7
	31:2 34:1,5,6,6,17	81:25,25 82:2,4		88:2 89:5,6,10	13:12,17,19 14:4
	34:18 35:14,14	82:10,15 90:20		90:13,22 91:7	51:2
	38:6,16 39:1,6	93:17		92:6,11,15,16	<b>known</b> 80:16
	40:8 46:19 48:17	<b>i've</b> 10:10 60:6,15	<b>judgment's</b>	59:1	1
	50:20 52:11 57:9	60:17 61:6 66:21	<b>juncture</b>	58:6	<b>laboring</b> 71:21
	61:2,9,19 62:12	69:8 71:5 82:1,1	<b>june</b>	2:5 36:9 73:8	<b>lack</b> 21:5 43:5
	62:24 63:8 64:3			76:17 96:25	75:17 80:1
	64:14,15 67:1,8		<b>jurisdiction</b>	65:4	<b>lacks</b> 42:2
	67:25 68:13,13				

<b>land</b> 28:9	<b>limited</b> 70:3	67:9,10 79:14,14	34:25 53:19 82:21
<b>latitude</b> 23:11	<b>line</b> 7:18 26:2	79:21	82:24 90:21
<b>laurence</b> 5:25	47:3,3 95:4	<b>llc's</b> 75:20,21	<b>maintenance</b>
<b>law</b> 5:11 7:22	<b>lines</b> 20:10 49:12	<b>llp</b> 5:3,18	85:11
69:20 70:7 71:5	<b>link</b> 20:8	<b>located</b> 3:4 55:1	<b>majority</b> 60:20
72:19 87:22	<b>liquidate</b> 39:23	<b>location</b> 25:4	<b>making</b> 73:7
<b>lawsuit</b> 71:25	56:17	28:12 62:16,16	<b>man</b> 69:1
<b>lawyer</b> 41:10	<b>liquidated</b> 50:9	63:7,12	<b>management</b>
46:20 61:9	68:8	<b>locations</b> 24:23	34:19 36:8
<b>lawyers</b> 46:22	<b>liquidating</b> 1:12	<b>locks</b> 40:19 41:15	<b>managers</b> 5:19
60:1	3:15,22 7:13	56:12	94:10
<b>lawyer's</b> 46:21	33:17 42:7 48:10	<b>logistically</b> 64:15	<b>manhattan</b> 14:13
<b>lay</b> 14:2 35:15	68:10 72:23 80:19	<b>long</b> 12:11 14:14	22:15 50:23 51:2
36:2 38:11	83:6,19 84:6	27:25 30:3 43:10	56:22 57:1
<b>learned</b> 43:9	85:19 86:14,16,22	45:19 73:16	<b>march</b> 36:9 40:13
<b>lease</b> 28:9	86:23 87:7,13	<b>longer</b> 67:2,3 85:9	53:14 54:6 56:8
<b>leave</b> 7:8 33:8	89:6,25 90:20	<b>look</b> 15:25 63:2	86:24
45:16 67:1 82:17	92:3,18	68:23,24	<b>mark</b> 85:19
<b>leaves</b> 67:7	<b>liquidation</b> 60:20	<b>looked</b> 20:25	<b>marked</b> 11:2,4
<b>leaving</b> 60:21	<b>list</b> 10:10,16 19:13	23:18	12:8 35:11,20
<b>ledanski</b> 4:25 96:3	47:12	<b>looking</b> 16:25	38:16
96:8	<b>listed</b> 15:13 16:11	19:6 20:6,17 36:7	<b>market</b> 15:3
<b>ledger</b> 70:19	19:21 24:8,11	45:21 46:3,4	19:17 24:3,4
<b>legal</b> 41:8,10	28:15 35:12 44:2	67:10	28:22 30:3 32:16
71:25 77:13 96:20	44:20 45:16,19	<b>lose</b> 58:11 86:3	32:20 50:23 51:2
<b>length</b> 83:15	46:5 52:8,11,11	<b>losing</b> 75:14	51:13,23 57:2,23
<b>lengthy</b> 28:21	52:17 68:16 76:8	<b>loss</b> 86:11 87:9	83:9
<b>letting</b> 58:11	<b>listing</b> 11:15,16	<b>lost</b> 86:4,5,7	<b>marketed</b> 15:23
<b>let's</b> 75:11	18:5,5 19:15,16	<b>lot</b> 25:12 73:19	16:13 19:20 22:19
<b>level</b> 22:14	20:6 32:8 44:11	<b>loves</b> 62:11	23:4,21 57:3
<b>lexis</b> 70:11	52:18	<b>low</b> 26:5 45:10	72:23 83:17
<b>liabilities</b> 68:20	<b>listings</b> 16:5	<b>lower</b> 13:15 23:23	<b>marketing</b> 24:1
<b>lien</b> 38:22,24,24	<b>litigation</b> 38:7	24:1 45:8 67:11	27:11 29:12,13
38:25 39:5,8,9,14	72:3 78:17	71:13	30:18 57:15,16
41:17,23 55:15,23	<b>little</b> 30:9 42:10	<b>lurking</b> 73:16	83:6,7
58:9,22 59:2	45:3,5 66:15	<b>m</b>	<b>maryam</b> 4:5 5:16
61:23 65:19,21,22	<b>live</b> 44:11 81:8	<b>m</b> 1:12 3:9,14 4:3	7:22
68:3 69:22	<b>lived</b> 26:4,9 49:8	6:4 29:25 34:13	<b>material</b> 87:21,22
<b>liens</b> 3:3,5 58:7	67:20	40:5 49:21	<b>materials</b> 27:20
<b>life</b> 85:2	<b>living</b> 24:16 28:2	<b>madison</b> 5:22	<b>matter</b> 1:6 59:1
<b>light</b> 56:18	61:19 84:25	<b>mail</b> 66:8 69:19	88:19
<b>likes</b> 62:11	<b>llc</b> 3:16 4:6 46:7	<b>main</b> 3:23 8:5 9:5	<b>matters</b> 35:17
	55:4 62:10 67:4,7	10:4 13:1 22:5	55:7,9 72:6,7

**[maximize - note]**

Page 14

<b>maximize</b> 50:5 57:2	<b>missing</b> 25:10,22 <b>mode</b> 44:18	<b>movant</b> 71:3,7 72:14 73:14 74:1 74:14 84:11,16,22 85:3,17	<b>net</b> 56:18 61:25 62:1
<b>maximizing</b> 45:22	<b>modest</b> 85:11,24 85:25	<b>move</b> 8:25 17:8 37:11 54:9 68:21 73:22 89:17	<b>network</b> 15:13,15
<b>maximum</b> 31:8 57:13	<b>moment</b> 27:13 46:16 48:19 55:6 77:3	<b>moved</b> 12:6	<b>never</b> 67:6,6 81:18 88:7
<b>mean</b> 19:22 25:6 40:24 62:23 64:22 92:25	<b>monetary</b> 57:9	<b>moving</b> 30:16 70:8 73:4 93:4	<b>new</b> 1:2 2:3 3:5 5:6,14,23 15:8
<b>means</b> 47:7 62:1 67:3	<b>monetize</b> 47:13 58:12 61:25	<b>multiple</b> 35:7,10 42:12 43:18,19 76:10 79:4,17	24:5,6,22,22 25:17,23 31:9 38:4,4 49:10
<b>mediums</b> 15:6 16:3,23	<b>monetizing</b> 63:5	<b>mute</b> 7:5 53:3 66:17 93:18	65:21 69:19 70:7 78:1 92:8,15 93:5
<b>meet</b> 66:23	<b>money</b> 3:18 50:14 58:10,15 59:19,19	<b>muted</b> 82:18	<b>niche</b> 28:12
<b>member</b> 22:13	60:7 63:6 67:11	<b>mystery</b> 68:14	<b>nobody's</b> 63:20
<b>memorialize</b> 89:1	69:4 73:19 77:23	<b>n</b>	<b>nolan</b> 3:9 4:2 5:8
<b>memorialized</b> 56:7	87:3 88:7	<b>n</b> 4:5 5:1,16 7:1 95:1 96:1	7:17 8:11,11,19 8:20 9:4,14,17
<b>mentioned</b> 25:9 27:21 28:8 47:4	<b>monies</b> 60:15	<b>n.y.</b> 3:5	10:7,9,15,18,23
<b>menus</b> 20:6,13,21	<b>month</b> 37:1 86:25 87:1 90:1	<b>name</b> 8:17 12:24 94:8	11:20,23 12:20
<b>merits</b> 73:24	<b>monthly</b> 36:14 68:7 85:15,25	<b>narrative</b> 23:10	13:22,25 14:7,10
<b>microphones</b> 82:9 82:18	87:8 88:9	<b>nature</b> 3:18 56:2 67:21 88:11	14:15,18,22 15:1
<b>million</b> 25:2 26:5 26:6 31:2,3,11 32:19 43:23 44:20 51:12,24 52:4 56:5 57:7,10 60:8 60:17 63:23 64:2 64:8 68:5 72:25 74:5 83:2 89:13 89:14,18,19 90:3 90:15	<b>months</b> 26:17 29:19 37:7 66:8 72:24	<b>necessarily</b> 8:4 44:13 45:22 48:14 68:22	17:8 22:1,3 23:9 26:12 27:1 29:8
<b>mills</b> 7:2	<b>moot</b> 90:12	<b>necessary</b> 94:5	32:1,3 33:5,25
<b>mine</b> 65:4	<b>morning</b> 7:14 40:8,9	<b>need</b> 14:15 18:9 25:14 45:19 54:4 65:18 73:12 87:8 89:13 90:14 92:16 92:22,23	34:8,12,14 35:8
<b>mineola</b> 96:23	<b>motion</b> 3:2,3,22 4:1,5 7:19 8:5,6,6 8:21 9:19 34:17 38:8 53:6,11,11 54:12,13,15,18,25 55:1 56:16 57:4 65:13 67:22 72:12 80:10,12 82:22,23 82:24 83:22,25 84:3,22 88:16	<b>needing</b> 25:13 77:12,13	35:13,19 36:4,5,6
<b>minimized</b> 21:5	90:18,18,21 93:9 93:10 95:6,8	<b>needs</b> 59:16	37:11 38:3,19,20
<b>minute</b> 10:19	<b>motions</b> 53:12 58:19 82:21	<b>negotiation</b> 44:3	40:1 41:7 42:1
<b>minutes</b> 82:3,5		<b>neighborhood</b> 64:2	45:25 48:16 49:19
<b>mischaracterizes</b> 27:3		<b>neighbors</b> 62:14	49:20,22 51:19,20
<b>misses</b> 85:19			52:2,23 53:7

[noted - paid]

Page 15

<b>noted</b> 94:5 <b>notes</b> 43:14 83:4 84:13 <b>notice</b> 3:3 43:6 89:8 <b>notified</b> 81:13 <b>notify</b> 82:10 <b>noting</b> 91:6 <b>notwithstanding</b> 56:11 <b>number</b> 7:6,10 9:3,5 10:11 21:4 34:15,23,25 41:21 42:14 54:8 55:6 56:8 57:8 59:16 59:17 64:22,22 65:4,6,10,10,25 66:3,3,11,13,24 67:24,25 72:24 76:3,20 79:23 80:1 92:7,13,13 93:5 <b>numbers</b> 45:22 <b>ny</b> 5:6,14,23 96:23	<b>objections</b> 8:23 17:10 26:11 <b>obligations</b> 65:8 80:17,25 83:20 <b>observe</b> 49:12 <b>obtain</b> 57:13 <b>obtained</b> 18:23 55:11,21 57:5,16 <b>obtaining</b> 55:25 88:3 <b>obviously</b> 16:14 19:19 20:18 52:25 62:23 65:2 67:1 <b>occupancy</b> 61:22 <b>occupation</b> 14:12 <b>offense</b> 61:24 <b>offer</b> 21:19 23:15 30:23 31:2,3,6,11 31:11 32:19 43:22 44:9 51:12,13,23 51:24 57:6,8,9,11 57:12 63:17,18,18 63:20 73:1 83:5,7 83:10,12 <b>offered</b> 12:18 19:7 52:4 53:5 83:13 <b>offering</b> 9:16 10:21,23 35:22 <b>offers</b> 29:17,17 30:25 43:18,19,19 43:20 44:2,4 57:5 57:12 <b>office</b> 15:13 42:21 65:21 <b>officer</b> 33:25 <b>oh</b> 20:2 40:9 58:24 <b>okay</b> 7:2 9:22 11:23 14:7,18,22 19:22,23 28:3,7 36:21 40:22,24 43:5,9 44:13,19 46:5 50:17,21	82:18 92:21 <b>old</b> 15:16 61:7 96:21 <b>once</b> 59:9 75:3 76:16,18 78:15,16 81:4 <b>ongoing</b> 48:6 55:18 68:7,10,11 69:12 <b>online</b> 16:7 19:20 20:19,25 21:8 <b>open</b> 19:17 83:14 <b>opened</b> 20:22 <b>openly</b> 16:13 <b>opine</b> 80:12 <b>opining</b> 26:8 <b>opinion</b> 27:15 30:20 70:21 <b>oppose</b> 76:1 81:14 <b>opposed</b> 19:16 45:22 56:4 61:10 63:4 68:19 93:15 <b>opposing</b> 54:13 74:17,21,22,25 79:25 <b>opposite</b> 63:10 79:18 <b>opposition</b> 54:15 70:12 <b>option</b> 33:12 53:2 68:2 <b>optional</b> 21:16,22 <b>oranges</b> 25:7 <b>order</b> 3:4,7,21 4:1 4:5 40:14 41:14 41:20 42:13 46:6 47:4 54:8 56:12 59:19 63:14 75:19 76:17,19 81:2 90:21,24 91:3,4 91:15 92:4,19,22 93:1,8,10,14	<b>ordered</b> 91:12 <b>original</b> 35:4 92:12 <b>originally</b> 47:17 <b>orion</b> 1:8,13 3:1 3:15 7:6 33:17 49:23 <b>outdated</b> 27:22 <b>outlined</b> 72:11 <b>outside</b> 48:17,19 <b>outstanding</b> 86:18 <b>overall</b> 42:8 <b>overlap</b> 8:5 <b>overruled</b> 21:15 37:15,20 72:20 <b>owed</b> 37:6 50:13 58:22 65:15 69:17 73:19 78:2 <b>owned</b> 76:20 81:7 <b>owner</b> 37:18,19 38:22 67:2,17 80:16,17 81:6 84:11 85:10,23 <b>ownership</b> 46:7 80:18 81:2,4 89:5 <b>owns</b> 59:1 80:13
<b>p</b>			
			<b>p</b> 3:9 4:2 5:1,1 7:1 <b>pachulski</b> 5:3 7:15 54:24 <b>page</b> 34:22 35:3,4 35:9,9 36:1 95:4 <b>pages</b> 19:6,7,8,12 20:17,20,20 21:23 35:10,20 <b>paging</b> 44:13 <b>paid</b> 36:19 37:8 59:1,2 60:9 64:24 65:1,18,22 67:12 74:6 78:12,13,13 85:15,16 88:14 89:11 90:1,13

## [pandemic - poundage]

Page 16

<b>pandemic</b>	28:14 57:19	71:24,24 80:12 83:11	<b>permit</b> 80:11 <b>permitted</b> 80:23 80:24	<b>playing</b> 73:21 <b>plaza</b> 2:2
<b>paolo</b>	70:4	<b>passed</b> 46:14	<b>person</b> 62:9,9	<b>pleadings</b> 92:22
<b>paper</b>	21:9	<b>pay</b> 45:5 59:8,9 64:1 68:3 74:4 85:10,24 86:3	<b>personal</b> 16:14	<b>please</b> 7:4,5,13 8:15 16:25 17:20 33:14 51:18 82:3
<b>papers</b>	70:2,12,12 74:11	87:8 88:6	<b>personally</b> 40:20 49:7	82:8,9,17
<b>parameters</b>	66:23	<b>paying</b> 37:19 50:13 55:19 64:19 68:8,17 74:2 78:11 86:24 88:9	<b>perspective</b> 25:5,7 44:23,25 49:24 57:9 67:8 75:21 80:4,15	<b>pleasure</b> 73:18
<b>park</b>	3:5 5:21 23:19 24:5,7,25 28:11	<b>payment</b> 3:7 65:9 89:4,4	<b>pertinent</b> 14:19	<b>plus</b> 65:7 89:19
<b>parlatore</b>	5:11 7:22 76:5	<b>payments</b> 87:1	<b>perused</b> 21:11	<b>point</b> 19:18 23:4 24:2,9 26:24
<b>parmar</b>	41:22 42:15,16 59:15,22 71:16 73:7,15 74:2 76:20,22 78:15,16,16 81:16 84:19	<b>payment's</b> 65:17	<b>phone</b> 7:5	27:10,16 33:3
<b>parmar's</b>	47:8 70:13,21 77:6	<b>payoff</b> 65:16,25	<b>photographs</b> 49:3 49:6	37:17 41:5 44:24
<b>part</b>	10:3 11:9 13:10 15:2 21:21 35:10 38:8 43:17 55:23 60:12 68:13 88:25 89:1,12 91:17 92:5	<b>pays</b> 68:3	<b>phrasing</b> 75:18	45:1 63:11 65:14
<b>partial</b>	53:13 88:1	<b>pen</b> 79:18,19	<b>picture</b> 67:3	67:11 69:18 76:6
<b>particular</b>	30:21 42:14 47:10 48:2 50:21 67:15 68:18 68:19 74:15,25 76:21 77:2 79:22	<b>pending</b> 4:5 8:6 19:17 39:21 47:24 47:25 53:11 54:14 54:16,20 59:14,20 61:16 63:15 67:16	<b>piece</b> 11:24 54:21 80:2	94:5
<b>particularly</b>	28:1 47:22 62:24	67:23 68:6 69:9 69:13 70:2 82:21 82:23 83:24 84:3 84:7 87:24 88:24	<b>pilot</b> 37:5	<b>pointed</b> 62:17
<b>parties</b>	7:5 54:2 68:14 71:1 79:23 79:24 80:2 82:16 84:1,4 87:25 88:23 89:1,9 91:1	89:3,10,12 90:5 90:18,24 91:3,9 93:9	<b>pittinsky</b> 5:18,25 69:16 71:23 73:18 76:24,25 77:11,19 77:23 80:11,22 82:13 93:19 94:2 94:10,11	<b>points</b> 24:18
<b>partner</b>	76:5 81:12	<b>penthouse</b> 25:2	<b>pittinsky's</b> 76:15	<b>pool</b> 50:16
<b>party</b>	18:3,11 21:19 70:9,20	<b>people</b> 21:11 61:18 79:17	<b>place</b> 41:24 45:2 49:15 73:6,19 76:4,20 77:15 79:7,12,23	<b>portion</b> 28:11
		<b>percent</b> 31:8	<b>plain</b> 93:9	<b>portions</b> 21:19,20
		57:10 61:2 69:20 83:2 89:19	<b>plaintiff</b> 1:14 8:12 86:14	<b>position</b> 73:2 74:4 77:6
		<b>perception</b> 32:17	<b>plaintiff's</b> 10:6 11:19 12:17 21:25 34:16 37:25 38:18	<b>possession</b> 36:20 40:13 41:4,5 55:11,20,25 56:13
		<b>percolate</b> 58:9	<b>plan</b> 50:12 60:5 60:14,16,24 65:8 83:21 87:4 89:24 91:8	<b>possessory</b> 56:6
		<b>percolating</b> 66:13		<b>possibility</b> 71:4 87:12
		<b>period</b> 30:3,4 44:3		<b>possible</b> 51:13 60:7 64:15,18 68:21
		58:16 62:2 83:6,7 85:4,9 89:11,17		<b>post</b> 64:1,18
		89:20 90:6,7,9		<b>posted</b> 89:13 90:3 90:3
				<b>posting</b> 64:5,7
				<b>posts</b> 68:5
				<b>potential</b> 44:7,12 76:8 86:17 87:9
				<b>potentially</b> 60:11 60:13
				<b>poundage</b> 65:18

## [practice - questioning]

Page 17

<b>practice</b> 16:21 <b>practicing</b> 33:22 46:20 <b>precarious</b> 73:2 <b>precise</b> 89:7 <b>precisely</b> 43:10 66:12 <b>preclude</b> 64:2 <b>prefabricated</b> 63:1 <b>prefer</b> 81:5 <b>prejudiced</b> 58:20 <b>prejudices</b> 87:2 <b>prejudicial</b> 80:20 <b>prepared</b> 64:1,7 82:20,20 <b>present</b> 6:1 9:19 58:4 <b>presented</b> 71:9 <b>preserve</b> 64:14 <b>preserving</b> 81:20 <b>presiding</b> 7:3 <b>pretty</b> 63:23 <b>prevailing</b> 87:22 <b>prevent</b> 63:15 <b>previously</b> 22:10 50:19 51:3 88:1 <b>price</b> 23:4,8,14,23 24:1,9,18 26:24 27:10,16 28:5,7 32:5,20 44:24 45:1,6,6,8,10,17 45:20 50:5,6 57:17 65:7 68:23 68:24 73:23 89:14 89:19 <b>priced</b> 29:4 <b>pricing</b> 45:12 <b>primarily</b> 76:5 <b>primary</b> 84:2 <b>print</b> 21:8,10 <b>printed</b> 20:19 21:7	<b>printouts</b> 9:12 <b>prior</b> 16:14 36:20 50:25 55:24 78:12 85:9,23 <b>pristine</b> 27:11,13 <b>private</b> 48:13 <b>probably</b> 58:19 69:21 70:14 73:7 73:8 <b>problem</b> 70:22 <b>procedural</b> 91:4 92:19,21 <b>proceed</b> 86:20 <b>proceeding</b> 8:7 11:2 34:23,25 35:6,21 46:11 47:25 48:4,4,5,6 48:19 53:14,18,22 53:23 54:3,8 55:13 56:9,9 71:20 75:22,23 76:8,12 77:10,15 78:20 86:15 87:16 90:22 91:5 92:7 92:15 93:4,5 <b>proceedings</b> 42:12 48:2,3 68:1 71:25 72:19 77:17 93:24 94:15 96:4 <b>proceeds</b> 50:11 59:22 60:11,13 62:1 88:14 <b>process</b> 18:23 47:13 50:12 52:8 54:5 56:3 57:15 57:16,22 58:12 75:4,14 83:13,15 83:18 <b>professional</b> 27:15 59:6 <b>projection</b> 16:21	<b>proper</b> 81:9 83:18 <b>properly</b> 83:17 <b>properties</b> 22:14 22:19 57:25 63:1 <b>property</b> 3:2,18 3:22 11:17 14:24 15:3,4,6,7,19 16:3 16:6,9,10,19,20 17:2 19:13,15,16 <b>problem</b> 70:22 <b>procedural</b> 91:4 92:19,21 <b>proceed</b> 86:20 <b>proceeding</b> 8:7 11:2 34:23,25 35:6,21 46:11 47:25 48:4,4,5,6 48:19 53:14,18,22 53:23 54:3,8 55:13 56:9,9 71:20 75:22,23 76:8,12 77:10,15 78:20 86:15 87:16 90:22 91:5 92:7 92:15 93:4,5 <b>proceedings</b> 42:12 48:2,3 68:1 71:25 72:19 77:17 93:24 94:15 96:4 <b>proceeds</b> 50:11 59:22 60:11,13 62:1 88:14 <b>process</b> 18:23 47:13 50:12 52:8 54:5 56:3 57:15 57:16,22 58:12 75:4,14 83:13,15 83:18 <b>professional</b> 27:15 59:6 <b>projection</b> 16:21	<b>provided</b> 17:6 89:9 <b>public</b> 71:19 72:1 72:4,8,9 87:23 88:11 <b>published</b> 18:24 <b>pulling</b> 79:18 <b>purchase</b> 22:22 <b>purchased</b> 57:17 <b>purchaser</b> 67:18 <b>purposeful</b> 63:13 <b>purposes</b> 10:25 21:17,22 35:19 38:15 53:21 66:11 91:1 <b>pursuant</b> 40:13 41:17 <b>pursued</b> 48:14 <b>pursuing</b> 48:1 <b>push</b> 57:21 <b>put</b> 7:5 10:10 15:7 16:5,7 17:6 18:1,2 18:9 19:8 53:2 59:22 62:2 63:1 74:4 76:2 77:12 88:7 <b>putting</b> 59:18
		<b>q</b>	<b>qualifies</b> 43:17 <b>question</b> 9:17 17:3 20:2 22:23 23:9 26:12,20,22 27:2,17 29:5,8,14 29:25 32:23 33:5 41:7 42:1,3 46:1 46:13 48:17 51:16 51:17 52:15,16 58:2,6,25 61:6,14 62:20 63:22 64:15 74:14 91:19 <b>questioned</b> 56:23 <b>questioning</b> 47:3 47:3

**[questions - residential]**

Page 18

<b>questions</b> 13:10 19:25 31:23 33:6 40:1,11,12 49:17 49:20 52:2,14,14 52:23 <b>quick</b> 40:11,12 46:3 <b>quickly</b> 29:3,6,6 29:24 30:16,20 60:7 68:24 69:17 80:11 <b>quite</b> 26:19 42:8 73:16 75:11 84:25 85:2	<b>really</b> 15:23 29:20 55:7 59:11,15 64:21 67:8 79:19 86:10 <b>realtor.com</b> 16:6 16:18,23 20:23,25 <b>reason</b> 24:1 28:4 41:11 51:11 62:20 63:4 67:13,16,22 77:9 81:5 85:22 <b>reasonable</b> 28:22 31:9 58:16 62:2 <b>reasoning</b> 63:10 <b>reasons</b> 53:24 68:20 77:5 83:25 90:19 93:10 <b>recall</b> 39:6 43:9 43:11 44:1 60:18 60:24 <b>receive</b> 29:17 30:25 36:15 51:25 <b>received</b> 30:22 43:18 44:2,4 51:24 57:24 <b>receiving</b> 37:19 89:23 <b>recess</b> 82:14 93:25 94:14 <b>recognize</b> 36:10 <b>recognized</b> 17:23 18:1 <b>recognizes</b> 89:22 <b>recollection</b> 43:13 44:6 61:2 <b>recommend</b> 27:14 <b>record</b> 9:2 10:2 11:1,3,6 12:9 14:21,23 21:16,21 34:3,19 35:19,22 36:3,8 38:12,15 55:12 56:24 65:24 66:15 81:21 83:10 83:12 84:15,17,24	85:8 87:16 89:15 90:19 91:6,12,17 91:25 93:10 94:1 94:3,9 96:4 <b>recorded</b> 7:4 65:20 <b>recover</b> 69:2 87:4 <b>recoverable</b> 67:3 <b>recoveries</b> 56:18 <b>recovering</b> 60:16 67:11 <b>recovery</b> 3:18 59:7 60:10 <b>redfin</b> 18:3 <b>redirect</b> 31:25 32:2 49:19,21 <b>reduce</b> 60:22 <b>refer</b> 34:15 46:3 55:4 <b>reference</b> 14:23 48:1 <b>referenced</b> 34:5 <b>referencing</b> 14:24 28:6 <b>referring</b> 55:2 <b>refiled</b> 92:23,24 <b>regarding</b> 47:23 56:15 <b>regardless</b> 29:3 <b>register's</b> 65:21 <b>regularly</b> 21:9 <b>rejected</b> 81:17 <b>relate</b> 53:12 <b>related</b> 4:3,7 36:14 <b>relates</b> 53:18 <b>relation</b> 85:24 <b>relative</b> 85:10 <b>relatively</b> 85:24 85:25 <b>relief</b> 53:13 92:17 <b>rely</b> 51:8	<b>rem</b> 47:18,20 48:4 <b>remain</b> 52:8,18 54:3 89:20 90:6 92:12 <b>remained</b> 90:10 <b>remaining</b> 53:22 54:7 92:20 <b>remains</b> 86:18 90:15 <b>removed</b> 25:21 <b>rendered</b> 91:24 92:12 <b>renders</b> 92:5 <b>renovate</b> 25:18 <b>renovated</b> 25:2,5 <b>renovation</b> 25:2 27:18,25 <b>renumbered</b> 17:25 <b>reorganization</b> 83:21 87:5 <b>repeat</b> 13:14 30:1 30:8 <b>repeats</b> 21:23 <b>repetitive</b> 35:14 <b>rephrase</b> 17:21 27:4 42:3 51:17 <b>replaced</b> 56:12 <b>report</b> 91:11,23 <b>represent</b> 36:12 <b>representation</b> 12:12 26:25 <b>represented</b> 31:16 44:17 51:3 <b>represents</b> 62:10 <b>request</b> 61:15 83:24 84:7 <b>require</b> 91:20 <b>research</b> 32:13 <b>resided</b> 26:16 <b>resident</b> 50:18 <b>residential</b> 3:8 5:19 50:18 51:2
<b>r</b>			
<b>r</b> 2:21 5:1 7:1 96:1 <b>rad</b> 21:2 <b>raise</b> 13:9 91:20 <b>raised</b> 67:20 69:15 71:8 72:14 73:6 74:13 <b>range</b> 23:20 26:5 26:6 68:5 <b>ranger</b> 26:10 <b>rate</b> 60:23 69:21 <b>rates</b> 61:1 <b>reached</b> 66:21 76:1 <b>read</b> 55:12 <b>readily</b> 20:15 65:1 89:7 <b>ready</b> 65:17 <b>real</b> 8:18 9:12 14:13 15:8 16:21 18:1 22:13 24:20 25:7 28:20 42:14 51:22 56:21,22 62:23 67:2 78:18 79:1,3,13,14 <b>realize</b> 48:25 66:23 75:7 76:23 <b>realized</b> 78:16			

[resolution - sell]

Page 19

<b>resolution</b>	81:4	59:13 61:3,5,21 66:10,19 68:8,9 68:25 69:21,24,24 73:3 77:14 79:2 81:24,24 82:8,15 82:20 90:25 93:16 93:21 94:13 <b>rights</b>	60:14 61:18 64:25 <b>riot</b>	26:10 <b>risk</b>	56:3 59:18 <b>river</b>	3:5,16 4:6 5:12 7:21,24 14:25 22:15,19 24:13,15 46:7 53:25 54:13 55:1 55:3 58:8,12 61:16 63:25 67:18 75:13 82:22 83:11 84:5,11,16,20 88:2,6 91:15 <b>riverhouse</b>	5:20 94:11 <b>road</b>	72:24 96:21 <b>rockefeller</b>	5:21 <b>rodeo</b>	50:19 <b>role</b>	48:10 <b>rolling</b>	66:6 <b>room</b>	24:16 <b>rooms</b>	32:11 <b>rosenberg</b>	5:18 94:11 <b>route</b>	68:23,24 <b>routes</b>	76:3 <b>row</b>	62:25 <b>rule</b>	26:11 46:23 70:4,8,8 82:6,21 <b>ruled</b>	91:7 <b>rules</b>	84:8 <b>ruling</b>	34:11 55:12 70:5 79:9 82:2,5 84:4 87:14 87:25 88:21 89:2 90:23 91:12,13,24 93:15 <b>rulings</b>	95:3 <b>running</b>	64:16 69:20 <b>s</b>	<b>s</b>	2:22 3:18 4:3,7 5:1 7:1,3 <b>sake</b>	34:21 <b>sale</b>	3:4 7:18 8:5 8:21 9:19 11:25 12:3,8,10 14:4 30:16 34:17 39:19 39:21 45:5,21 46:4,4 52:17,19 53:6 54:12,13,15 54:18,25 55:24,25 56:19 57:4,19 58:7,7 59:19 61:15 63:15 64:2 64:23,23 65:7 66:25,25 67:22 68:5 73:5,16,23 75:7,11,25,25 81:17 82:24 83:1 83:3,13,16 86:4 86:17 87:9 88:14 88:14 89:14,19 90:21 <b>sales</b>	3:8 15:3 32:23 56:2 57:17 <b>sartison</b>	1:16 3:11 3:16 7:11 <b>satisfaction</b>	87:18 <b>satisfactorily</b>	70:9 <b>satisfied</b>	72:7 84:14 <b>satisfying</b>	80:8 <b>saw</b>	56:25 <b>saying</b>	24:21 26:13 27:20,22 58:5 61:7 67:5 says	76:25 77:4 <b>scharf</b>	5:9 7:14,15 26:7 34:8 54:17 54:23,23 58:18 59:4 60:2 65:12 66:5,14,20 92:2,2 92:21 93:7,20 <b>schedule</b>	3:21 <b>scheduled</b>	55:24 75:25 <b>school</b>	15:16 <b>scope</b>	33:3,4 48:19 <b>scratches</b>	25:22 <b>screen</b>	8:16 33:15 <b>screenshots</b>	11:12 11:14,14 <b>script</b>	61:5 <b>second</b>	72:10 86:13 <b>section</b>	75:3 <b>secure</b>	42:14 68:6 83:3 <b>secured</b>	41:21 42:13 50:13 60:5 <b>securing</b>	41:11 <b>see</b>	8:14 20:9,9,15 27:17 46:14 64:17 66:17,22 71:8 76:23 <b>seek</b>	39:14 91:10 <b>seeking</b>	67:13 91:14 <b>seen</b>	32:23 49:1 <b>sees</b>	67:4 <b>seizing</b>	47:8,13 <b>seizure</b>	86:8 <b>selected</b>	57:6 <b>self</b>	74:4 <b>sell</b>	3:2,22 15:3 23:20 29:3,18,19 29:20 39:11,15,23 49:24 55:1 82:22
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[sell - stay]

Page 20

95:6	<b>showed</b> 57:5	<b>somewhat</b> 11:16	8:18,21 9:10,24
<b>seller</b> 30:19 44:25	<b>shown</b> 70:17	45:4,8 49:9 75:17	10:13,22 11:21
<b>selling</b> 30:20 50:3	<b>shows</b> 70:18	85:19	12:11,19,21,22,25
51:9,25 56:22	<b>side</b> 24:9 25:3	<b>sonya</b> 4:25 96:3,8	13:3,7,13,19 14:1
57:25 73:4	28:5 45:11 52:13	<b>soon</b> 63:23	14:9,11 15:2
<b>sells</b> 30:17	53:5 70:19 75:1	<b>sorry</b> 29:25 30:6	17:15,17 22:1,8
<b>send</b> 18:4	76:15 77:2	40:24 45:25 58:1	22:10 26:8,8 27:8
<b>sense</b> 66:18	<b>sides</b> 63:10 74:17	58:24 80:21 92:8	31:24 32:2,4 33:8
<b>sent</b> 66:8	74:21,23,25 79:8	<b>sort</b> 45:18 74:17	43:19 44:6,16
<b>separate</b> 9:21	<b>significant</b> 28:10	76:15	49:9 51:1,3,8,8,22
10:14 38:9 53:22	28:12 37:22 49:4	<b>sought</b> 42:13	56:20,23 57:1
54:8 77:17 92:7	71:6 87:13	81:16,18	62:17,19 82:25
<b>september</b> 75:13	<b>simplifies</b> 53:25	<b>sounds</b> 78:14	<b>stanton's</b> 8:23 9:7
78:1 85:13,16	<b>simply</b> 19:17 64:9	<b>speak</b> 7:4 19:15	9:15 10:2 12:2
<b>served</b> 71:19	64:14 68:10 77:3	20:6,19 25:10	13:21 34:7 44:23
72:10 74:7	79:15 92:16	26:2 58:3 66:6	57:14
<b>services</b> 51:5	<b>sing</b> 67:5	76:11	<b>start</b> 7:6 8:8,12
<b>set</b> 67:1 70:1,4	<b>single</b> 34:22 35:3	<b>speaking</b> 7:5	<b>state</b> 38:4 41:18
72:1,9 78:8 90:19	35:25 70:14	47:22	64:25 71:25 75:24
<b>sets</b> 14:3	<b>sir</b> 33:13	<b>speaks</b> 65:12	76:12 77:10 78:1
<b>settlement</b> 81:3	<b>site</b> 18:13 19:9	<b>specializes</b> 22:14	79:10 81:13 84:10
<b>settling</b> 80:14	20:11	31:13,16	85:21 87:10 89:4
<b>sever</b> 53:21	<b>sites</b> 18:3,4,15,16	<b>specializing</b> 28:21	90:13 94:7
<b>severance</b> 93:1	18:16,18,20,21,22	<b>specific</b> 19:7	<b>stated</b> 93:10
<b>severed</b> 54:7 92:9	19:1 20:5	20:17 46:23	<b>statement</b> 32:4
92:15	<b>sitting</b> 58:15	<b>specifically</b> 18:25	38:9 39:16 50:10
<b>severing</b> 91:4	76:24	19:1 24:6 26:15	50:23 56:15 70:23
92:20	<b>situation</b> 30:4	72:9	81:10,21
<b>severs</b> 54:2	67:8	<b>speculation</b> 51:16	<b>states</b> 1:1 2:1
<b>shape</b> 75:4 77:1	<b>six</b> 29:19	<b>speedy</b> 53:17	<b>status</b> 3:12 19:19
<b>share</b> 37:6 65:17	<b>slow</b> 93:17	<b>spite</b> 48:5	80:17
<b>shared</b> 37:9	<b>slowly</b> 30:16	<b>split</b> 54:19 56:4,5	<b>stay</b> 4:5 8:6 33:9
<b>sharks</b> 76:10	<b>small</b> 60:21	<b>spoken</b> 77:11	52:25 53:11 54:14
<b>sheriff</b> 56:2	<b>smaller</b> 61:24	<b>stand</b> 13:22	54:15,20 59:14,20
<b>sheriff's</b> 39:19,21	<b>sold</b> 23:23 29:6,24	<b>standard</b> 29:23	61:16 63:15 67:13
55:24,25 68:4	50:18 56:3 59:10	30:2,13,14 31:9	67:16,23 68:6
73:16,23 75:7,11	67:25 72:23 73:20	<b>standing</b> 79:17	69:9,13 70:2,21
75:24,25 81:17	75:2,3 81:5 85:18	<b>stands</b> 37:14	71:19 72:19 74:7
86:4,17 87:9	85:20 86:12 87:6	66:18 87:16	80:10,10,12 81:5
<b>shiny</b> 49:10	90:2	<b>stang</b> 5:3 7:16	81:16,18 82:1,3,8
<b>short</b> 28:23	<b>solutions</b> 96:20	54:24	82:23 83:24 84:3
<b>shot</b> 78:5,10	<b>somebody</b> 26:13	<b>stanton</b> 6:3 7:19	84:7,13,22 86:11
	51:1	8:10,13,14,17,17	86:15,19 87:7,24

[stay - that's]

Page 21

88:10,12,16,18,24 89:3,10,12,16,20 90:5,6,18,24 91:3 91:9 93:9,11 95:8 <b>stayed</b> 76:2 80:1 <b>staying</b> 70:13 <b>stays</b> 68:2 <b>step</b> 14:8 <b>sterling</b> 8:1 <b>stigma</b> 28:10 <b>stop</b> 47:14 73:22 89:11 <b>straight</b> 26:2 <b>strategically</b> 45:2 <b>strategy</b> 45:11,12 <b>stream</b> 61:15 <b>streams</b> 58:3 69:8 <b>street</b> 15:22 <b>streeteasy</b> 15:21 18:9 <b>strike</b> 39:8,14 50:17 <b>strings</b> 64:23 <b>strongly</b> 67:18 <b>sub</b> 35:20 38:16 <b>subject</b> 12:15 36:22 38:6 39:19 42:17 50:10 60:13 67:16 <b>submit</b> 12:3,4 73:3,13,25 90:21 92:4,16 93:1 <b>submitted</b> 8:20 34:23 71:5 <b>subsequent</b> 41:13 <b>subsequently</b> 39:1 <b>substantial</b> 56:2 58:21 65:6 68:5 70:20 71:4 85:9 85:12,17 86:15 87:11,19 88:4 <b>substantially</b> 11:9	<b>subsumed</b> 55:23 <b>success</b> 71:4 87:12 <b>succinct</b> 23:16 46:21 <b>suffer</b> 70:20 71:7 71:7 72:14 73:14 74:1 75:2 84:12 84:17 85:17 86:15 <b>sufficient</b> 27:9 <b>sugarcoat</b> 72:15 <b>suggested</b> 27:10 <b>suit</b> 3:18 <b>suite</b> 5:13,22 96:22 <b>sum</b> 67:11 73:25 <b>summary</b> 4:2 38:8 62:5 87:15 88:1 <b>support</b> 8:21 83:1 <b>supported</b> 84:21 <b>supporting</b> 9:7 84:18 <b>supreme</b> 61:17 71:14 81:12 <b>sure</b> 8:17 18:14 18:16 19:1 21:8,9 27:6 30:21 41:3 44:17 46:16 49:13 58:18 59:4 61:4 86:3 <b>surrounding</b> 32:14 50:7 <b>suspension</b> 78:9 <b>sustained</b> 29:10 <b>swear</b> 13:10 <b>swearing</b> 13:10 <b>swept</b> 78:17 <b>swift</b> 45:21,24 <b>swiftly</b> 68:21 <b>sworn</b> 13:9 <b>syndicate</b> 18:15 <b>syndicated</b> 18:8 <b>syndicates</b> 15:8 19:4	<b>system</b> 19:3 <b>t</b> <b>t</b> 96:1,1 <b>table</b> 59:3 <b>tabs</b> 11:13 20:22 <b>take</b> 7:9,12 8:5,8 14:8 18:12 28:2 33:12 37:13 46:16 53:2,10 54:11 64:4 68:11,18 69:1 78:23 80:3 81:8 82:24 <b>taken</b> 11:14,16 49:3 69:4 88:19 <b>talk</b> 59:25 61:6,11 61:17 62:1 <b>talking</b> 45:14 65:14 73:18 <b>taub</b> 70:10 72:11 <b>taxes</b> 37:6 55:16 85:11 <b>team</b> 8:18 51:22 57:3 <b>tear</b> 25:12,16 26:22 27:9 28:8 62:18 <b>technology</b> 30:12 <b>tell</b> 14:11 16:16 16:25 19:8 23:7 46:19 73:10 82:5 <b>temporarily</b> 82:4 <b>term</b> 21:6 43:5 80:1 <b>terms</b> 14:6 26:23 30:16 63:24 78:11 85:10 92:3 93:12 <b>terrace</b> 3:16 4:6 5:12 7:21,24 14:25 22:16,19 46:7 54:1,13 55:1 55:3 58:8,13 61:16 63:25 75:13 82:22 83:11 84:5	84:11,20 <b>terrance</b> 67:18 84:16 88:3,6 91:16 <b>terrible</b> 46:23 <b>testified</b> 28:16 43:16,16 44:16 <b>testifies</b> 12:11 <b>testify</b> 23:13 <b>testifying</b> 41:10 <b>testimony</b> 13:11 13:22 14:17 26:25 27:3,8 30:13 45:13 55:7 57:14 82:25 83:4 <b>thank</b> 8:2 11:23 14:7,18,22 15:16 15:25 17:14,22,23 20:1 21:12 22:7 31:24 33:7,10,11 34:12 36:5 37:10 38:19 39:25 40:4 40:11 44:19 46:17 49:18,19 52:22,24 54:23 61:3 66:19 66:20 68:25 69:24 74:8 81:24 82:10 82:11,12,13 91:18 91:21 92:1 93:7 93:17,19,20,21,23 94:13 <b>thanks</b> 35:18 <b>that'll</b> 35:18 <b>that's</b> 9:17,18,21 10:5 11:4 14:16 19:2 20:15 21:4 25:3 26:23 27:23 30:18,21 31:13 37:5 38:12 39:4,9 40:9,15 41:13 42:24,25 45:18 47:19 52:7,12 56:8 58:22,24
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[that's - ultimately]

Page 22

61:23 62:25 64:3 64:21 65:4,4,7,10 66:12,13 67:13 68:3,20 70:10,22 72:14 74:6,16 75:12,16 77:1 78:21 79:2,21 80:8 81:6 88:11 89:14 92:9,13 93:1 94:8 <b>theoretically</b> 90:12 <b>there's</b> 17:19 20:18 21:8 25:22 28:1 29:19,22 37:21 38:5 56:2 59:14,17 61:20 63:18,18 71:1 74:14 75:3 78:7,8 81:19 83:10 84:15 84:16,18 86:8,19 87:17 <b>they're</b> 11:13,14 24:23,25 29:4 36:9 70:18 71:23 71:24 72:17,18 79:18 84:21 <b>thing</b> 24:21 47:1 67:10 94:8 <b>things</b> 18:8 20:10 20:16 28:7 35:2 48:9 67:20 69:22 79:10 92:24 <b>think</b> 8:12 14:3 16:11 18:14 20:24 30:17 34:6,21,25 35:3 39:6 44:16 45:2 47:1 49:13 50:3 53:2 55:6 58:18,20 59:9 60:17 64:12 68:20 70:16 71:20,21 72:10 74:11 79:16	81:23 <b>thinking</b> 45:20 60:4 61:10,11 <b>third</b> 5:5 18:3,11 71:3,17 72:11 90:5 <b>thought</b> 23:20 45:3 88:17 <b>threatening</b> 68:4 <b>threatens</b> 89:5 <b>three</b> 25:6 65:11 66:8 67:24,25 70:17,25 72:9 74:3 85:1,9 88:8 <b>thumbs</b> 82:18 <b>tie</b> 59:23 60:11 <b>tied</b> 59:15,16 <b>time</b> 11:15 16:13 16:15 22:25 27:25 28:21,23,23 29:3 30:4,4 32:7 41:17 41:25 42:9 44:1 44:10 46:5 47:21 48:13 56:1,1 58:9 58:16 62:2 65:17 66:1 73:12,16,17 73:18 75:11,25 77:11,14,18,23 84:10 85:1,2,4,9 86:21,21 <b>times</b> 25:19 69:11 <b>timing</b> 50:14 65:3 <b>title</b> 37:16 62:5 84:5 88:3 91:8 <b>today</b> 36:23 54:25 56:25 60:2 66:18 82:6 84:4 90:23 91:13 <b>told</b> 44:6,8 46:22 73:18 <b>top</b> 59:4 84:10 <b>total</b> 30:25	<b>totally</b> 24:22 <b>touch</b> 47:2 <b>tough</b> 72:17 <b>town</b> 63:17 <b>trade</b> 5:13 <b>tranche</b> 60:5 <b>transaction</b> 48:13 <b>transcribed</b> 4:25 <b>transcript</b> 96:4 <b>transfer</b> 3:19 78:20 88:4 <b>transferee</b> 55:5 <b>transferred</b> 48:12 69:3 77:21 <b>transferring</b> 46:6 <b>treat</b> 58:7,8 81:6 <b>treating</b> 84:7 <b>tremendous</b> 77:22 <b>trial</b> 3:21 11:3,6 12:9 21:16 35:22 36:3 38:15 <b>true</b> 12:2,5,13 13:5,12,17 17:1 62:13 63:8 73:1 81:12 96:4 <b>trulia</b> 15:21 <b>trust</b> 2:22 7:3,12 41:21 42:13 60:19 68:8 72:6 82:15 83:19 <b>trustee</b> 1:12 3:15 5:4 7:13,16,17,18 8:9 23:3,14 30:25 33:17 36:16 37:17 37:18 39:15 42:8 45:16 48:10 49:23 54:12,15,24 55:4 55:11,18,20,25 56:12,19 57:7,24 59:5,13,16 62:6 67:7 68:11,16,21 69:1,2,5 70:22,24 71:2 72:23 73:3,4	73:21 80:19 83:6 83:8 84:6 85:19 86:14,16,22,23 87:7,13 89:25 90:20 91:8,8 92:3 92:18 <b>trustees</b> 3:22 <b>trustee's</b> 34:16 56:6,17 57:24 70:19 72:3 89:6 <b>trustworthiness</b> 37:22 <b>try</b> 23:15 30:12 39:23 64:14 66:18 76:1 82:2 <b>trying</b> 45:2 47:13 50:17 60:6 63:11 68:21 73:22 77:3 79:16 80:2,6 <b>turn</b> 56:10 82:9 82:17 <b>turns</b> 45:8 <b>two</b> 13:9 24:19,22 31:1 35:2 42:10 43:19 47:16 53:2 57:5 61:1 63:21 64:22 65:6,10 77:17 79:8 82:21 85:1 86:9 89:12 90:2,9 <b>type</b> 14:4 15:18 16:18,22 25:14 58:6 88:9 <b>types</b> 16:2 <b>typically</b> 29:3 41:15 <b>u</b> <b>u.s.</b> 2:23 42:20 71:14 78:18 <b>u.s.c</b> 3:3 <b>ultimately</b> 50:9 57:6
--	--	--	--

<b>unable</b> 27:23	<b>unusual</b> 49:5	<b>virtue</b> 62:18 80:1	<b>wear</b> 25:12,16
<b>uncertain</b> 80:22	67:19	81:2 84:4	26:22 27:9 28:8
<b>underlying</b> 72:19	<b>upkeep</b> 74:3	<b>voir</b> 17:11,15	62:18
72:21	<b>uploaded</b> 16:11	<b>voluntary</b> 78:9	<b>webpages</b> 11:12
<b>undermine</b> 39:14	18:5,22 19:1	86:20	11:12 21:20
<b>understand</b> 15:9	<b>uploading</b> 18:21	<b>w</b>	<b>website</b> 21:24,24
17:20 38:24 43:15	19:3	<b>wait</b> 91:20	<b>Websit</b> 15:9,10
44:19 49:7,15	<b>upper</b> 24:9 25:3	<b>waited</b> 72:22	15:14,20 21:5
66:14,16 76:25	28:5	<b>waive</b> 33:24	<b>weeks</b> 29:20
80:6 81:1	<b>use</b> 49:25 59:13	<b>walk</b> 32:10 61:16	<b>weigh</b> 88:10
<b>understanding</b>	77:7 78:15	<b>wall</b> 15:21	<b>weight</b> 14:6
27:19 30:1,12	<b>utility</b> 37:9	<b>walls</b> 25:17	<b>welcome</b> 33:9
36:25 39:13 45:7	<b>utilization</b> 51:22	<b>wandered</b> 48:18	52:25
47:19 57:1 92:4	<b>utilize</b> 38:10	<b>want</b> 7:7 8:8,9	<b>went</b> 20:23,24
<b>undertake</b> 57:22	<b>utilized</b> 38:7	10:7 13:23 22:5	44:4,11
<b>undertook</b> 56:19	<b>v</b>	25:5,6,18 27:4	<b>weren't</b> 78:12
<b>undisputed</b> 87:22	<b>v</b> 1:15 3:11 7:10	34:9 35:22 36:2	86:3
<b>unequivocally</b>	<b>valid</b> 78:7 85:21	46:14 50:5 61:5	<b>wesley</b> 6:3 7:19
70:18 71:20	<b>value</b> 29:2,4 32:20	61:10,12 64:14	8:17 14:9 17:15
<b>unfair</b> 47:9	51:13 57:2,18	65:13,24 69:9,14	22:8 32:2
<b>uniform</b> 18:5	85:25	73:8 75:6,16	<b>west</b> 24:9,11,24
<b>unique</b> 49:5 62:22	<b>values</b> 20:10	76:13 80:15 81:3	25:3 28:5
62:23,24 63:3,3,3	<b>vanilla</b> 93:9	81:20 91:16 92:25	<b>we'd</b> 68:6
67:15,19,21	<b>vantage</b> 37:17	93:14 94:3	<b>we'll</b> 7:6,9,12 8:8
<b>unit</b> 11:25 12:8	<b>vantagepoint</b> 78:7	<b>wanted</b> 9:23	10:4 33:13 54:8
26:14,17 37:6	80:5	21:19 41:3 47:2	55:4,5,10 56:4,15
80:14,15,17,18	<b>various</b> 9:12 11:5	50:22 52:8 66:14	82:10
81:5,8,11 83:2,13	15:13 16:2,2	<b>wants</b> 23:11	<b>we're</b> 28:13 55:2
83:17 84:12,25	56:23	<b>war</b> 45:11,14	65:14,24 66:15
85:2,5,7,10,11,25	<b>veritext</b> 96:20	<b>warn</b> 49:9	69:5 72:24 73:2
86:4,17	<b>version</b> 21:4,6,7	<b>warrant</b> 72:11	73:19 74:17,24
<b>united</b> 1:1 2:1	<b>versus</b> 28:5	<b>wasn't</b> 46:3 49:10	76:11 92:4,6
<b>units</b> 14:4	<b>vested</b> 67:20	60:12 74:4 76:4	93:25
<b>unknown</b> 2:25	<b>vesting</b> 84:5 91:7	79:3,13,13,14	<b>we've</b> 31:19 44:23
<b>unpaid</b> 39:1 55:15	<b>view</b> 24:13,15	<b>waste</b> 77:23	54:18 76:1 77:4
65:22 86:18	49:13 62:11 63:3	<b>water</b> 49:13,14	<b>whatsoever</b> 24:23
<b>unrelated</b> 51:4	88:21	<b>waterfront</b> 49:11	<b>what's</b> 15:12
<b>unresolved</b> 92:14	<b>viewing</b> 79:22	<b>way</b> 15:16 20:16	35:15 39:13,13
<b>unsecured</b> 50:11	<b>viewpoint</b> 25:24	20:16 21:8 58:11	60:23 63:24 85:8
50:16	26:1 67:4	59:10 74:18 75:3	<b>whisper</b> 60:2
<b>untouched</b> 27:11	<b>views</b> 49:11,11	75:4,18 77:1	<b>whistle</b> 25:4
27:14	<b>virtual</b> 15:13	79:16,21 80:5	<b>whistles</b> 25:9,10

[who's - zoom]

Page 24

<b>who's</b>	80:23,24,24	<b>x</b>	20:12,13
<b>willing</b>	44:9 45:4	<b>x</b>	zoom 82:3,8
64:13	72:25	<b>y</b>	
<b>win</b>	58:10	<b>yeah</b>	30:11 39:8
<b>wish</b>	33:8 53:1		50:2 58:24 60:15
91:1,16	93:11		72:14 75:8
<b>wishes</b>	14:5 91:10	<b>year</b>	43:1 69:19
<b>wishing</b>	54:1		69:20 75:14 85:22
<b>withdraw</b>	23:12		86:24 89:17,20
33:5			90:7,7,9
<b>withdrawn</b>	48:21	<b>years</b>	26:4,9 27:24
48:23			27:25 42:10 59:16
<b>witness</b>	7:18		59:17 61:1,7,8
23:11	26:11,15		62:20 69:11 71:1
33:10	34:9 38:10		85:1,1,9 86:10
41:13	46:19,20		88:8
49:18	52:7,12,21	<b>years'</b>	74:3
52:25	53:2	<b>york</b>	1:2 2:3 3:5
<b>witnesses</b>	7:24 8:9		5:6,14,23 15:8
10:10	12:4		24:5,6,22 31:10
<b>witness's</b>	27:3		38:4,4 65:21
<b>wonderful</b>	61:8		69:20 70:7 78:1
<b>won't</b>	72:15 74:12	<b>you'd</b>	43:18
<b>word</b>	63:14	<b>you'll</b>	7:25 33:14
<b>words</b>	26:3 44:3	<b>you're</b>	9:16 13:11
<b>work</b>	25:13,14		20:6,12,24 26:17
69:14	77:13		27:19,23 28:5
<b>worked</b>	22:11		33:8,9 35:22
31:17			41:10 45:12,12
<b>working</b>	22:10,25		46:20 48:9,25
<b>works</b>	18:7		49:15 52:25 62:7
<b>world</b>	5:13		74:22 78:15
<b>worth</b>	74:3	<b>you've</b>	13:16
<b>worthy</b>	72:7		18:19 28:8 42:7
<b>wouldn't</b>	28:24,25		55:7 81:2
90:12		<b>yvette</b>	7:2
<b>would've</b>	43:13	<b>y'all</b>	78:10
<b>written</b>	91:21	<b>z</b>	
<b>wrong</b>	9:14 23:2	<b>ziehl</b>	5:3 7:16
62:5	76:18		54:24
		<b>zillow</b>	15:21 16:18
			16:23 18:3,9